

ESTTA Tracking number: **ESTTA713433**

Filing date: **12/08/2015**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91213057
Party	Defendant Hylete LLC
Correspondence Address	KYRIACOS TSIRCOU TSIRCOU LAW PC 515 S FLOWER ST , FL 36 LOS ANGELES, CA 90071 2221 UNITED STATES kyri@tsircoulaw.com
Submission	Testimony For Defendant
Filer's Name	Kyri Tsircou
Filer's e-mail	kyri@tsircoulaw.com
Signature	/kyri tsircou/
Date	12/08/2015
Attachments	Wardlow 10-27-15 Signed.pdf(2478028 bytes ) James Wardlow Exhibits A-L 10-27-15.pdf(4091542 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HYBRID ATHLETICS, LLC,

Opposer,

vs.

Opposition No.  
91213057

Hylete, INC.,

Applicant.

Application Serial No.  
85/837, 045

---

DEPOSITION OF JAMES WARDLOW

October 27, 2015

9:00 a.m.

568 Stevens Avenue

Solana Beach, California

REPORTED BY:

Karla L. Beard

CSR No. 13036

1 APPEARANCES:

2  
3 For Applicant:

4 TSIRCOU INTELLECTUAL PROPERTY LAW  
5 JOHN BEGAKIS  
6 515 South Flower Street, 36th Floor  
7 Los Angeles, California 90071  
8 323.660.9916  
9 john@tsircoulaw.com

7 For Opposer:

8 WHITMYER IP GROUP  
9 MICHAEL J. KOSMA  
10 600 Summer Street  
11 Stamford, Connecticut 06901  
12 203.703.0800  
13 mkosma@whipgroup.com

12 Also present:

13 Ron Wilson, II  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

INDEX TO EXAMINATION

WITNESS: JAMES WARDLOW

EXAMINATION

PAGE

By Mr. Begakis

5, 50

By Mr. Kosma

43

**James Wardlow**  
**October 27, 2015**

INDEX TO EXHIBITS

JAMES WARDLOW

Hybrid Athletics, LLC vs. Hylete, Inc., et al.

Tuesday, October 27, 2015

Karla L. Beard, CSR No. 13036

MARKED	DESCRIPTION	PAGE
Applicant's		
Exhibit A	Applicant's Notice of Trial Deposition	7
Exhibit B	Color photocopy of screenshot of Hylete's website page	13
Exhibit C	Color photocopy of screenshot of Hylete's Facebook page	16
Exhibit D	Color photocopy of screenshot of Hylete's Instagram page	22
Exhibit E	Black and white photocopy of Pages 68 - 72 of I. Jentgen's deposition transcript	26
Exhibit F	Color photocopy of screenshot of Hybrid Athletics' website page	27
Exhibit G	Color photocopy of screenshot of SimilarWeb "Traffic Overview"	28
Exhibit H	Color photocopy of screenshot of Google Trends' "Compare"	30
Exhibit I	Color photocopy of screenshot of Google Trends' "Compare"	32
Exhibit J	Black and white photocopy of two logos	33
Exhibit K	Black and white photocopy of four logos	35

1	INDEX TO EXHIBITS (Continued)		
2	MARKED	DESCRIPTION	PAGE
3	Applicant's		
4	Exhibit L	Photocopy of Hylete's "Exit Survey"	37
5	Exhibit M	Photocopy of printouts of Hylete's "Exit Survey"	39
6			
7	MARKED	DESCRIPTION	PAGE
8	Opposer's		
9	Exhibit N	Black and white photocopy of screenshot of Hylete's Facebook page	44
10			
11	Exhibit O	Black and white photocopy of screenshot of Hylete's Facebook page	45
12			
13	Exhibit P	Color photocopy of screenshot of Facebook page	48
14			
15	Exhibit Q	Color photocopy of cell phone screenshot of Hylete's Facebook page	49
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

Solana Beach, California;  
Tuesday, October 27, 2015; 9:00 a.m.

JAMES WARDLOW,  
having been first duly sworn,  
was examined and testified as follows:

MR. BEGAKIS: All right. I will start by having  
everybody in the room identify themselves ending with the  
witness.

MR. WILSON: Ron Wilson, CEO of Hylete.

MR. KOSMA: Michael Kosma with Whitmyer IP Group, on  
behalf of Hybrid Athletics.

THE WITNESS: James Wardlow, director of marketing at  
Hylete.

EXAMINATION

BY MR. BEGAKIS:

Q Good morning, Mr. Wardlow. I'm John Begakis,  
attorney for Tsircou Intellectual Property Law, counsel  
for Hylete, Inc. This is a deposition in which I will ask  
questions, you must answer them truthfully. Although no  
judge is present, this is a formal legal proceeding just  
like testifying in court and you are under the obligations  
to tell the truth, the whole truth and nothing but the

1 truth. If you don't understand any of my questions,  
2 please feel free to say so and I will be happy to rephrase  
3 them. Before the deposition can be used in court, you  
4 will have the opportunity to read over and correct any  
5 mistakes.

6 Do you understand?

7 A Yes.

8 (Applicant's Exhibit A was marked for  
9 identification by the court reporter.)

10 BY MR. BEGAKIS:

11 Q Mr. Wardlow, I am handing you what's been marked  
12 Exhibit A into evidence.

13 Do you recognize this document?

14 A I do.

15 Q What is this document?

16 A This is "Applicant's Notice of Trial Deposition."

17 Q Is this why you are here today?

18 A Yes.

19 Q Mr. Wardlow, where do you live?

20 A I live in San Diego, California.

21 Q What is your current job?

22 A Director of Marketing at Hylete.

23 Q Mr. Wardlow, what is your educational background  
24 starting with high school?

25 A I went to high school in Maui, Hawaii. I



1 graduated from King Kekaulike High School in Pukalani,  
2 Hawaii.

3 Q Can you spell that for the record?

4 A No, I can't, without embarrassing myself.

5 Q Okay. And where did you go to college?

6 A I went to San Diego State University.

7 Q After college, where did you work?

8 A After college, I worked at -- my first real job  
9 in online marketing was at H2O Audio in 2007.

10 Q So you started in 2007; what was your title at  
11 H2O Audio?

12 A I started as the online marketing coordinator.

13 Q And what was your role as online marketing  
14 coordinator?

15 A Initially, I was hired as the online marketing  
16 coordinator, so it consisted of an overall director of  
17 communication of our online marketing, starting with  
18 social media, e-mail, and that kind of tailed into me  
19 actually running the e-commerce portion of it, which --  
20 then I got a title shift into e-commerce manager of H2O  
21 Audio.

22 Q Approximately, when did that title shift happen?

23 A Approximately, six months into my first year at  
24 H2O Audio.

25 Q How big -- to your knowledge, how big was H2O

1 Audio when you first started?

2 A As far as revenue? Size of employees?

3 Q As far as revenue.

4 A Revenue, I -- best of my memory, I believe I --  
5 honestly, as a whole of the company, I can speak more into  
6 the online e-commerce portion of it. We were probably  
7 about \$500,000 a year in online revenue.

8 Q When you started?

9 A When I started.

10 MR. KOSMA: I'm going to object to the answer as  
11 speculation and hearsay.

12 BY MR. BEGAKIS:

13 Q And when you left, how big was the company in  
14 terms of e-commerce revenue?

15 A E-commerce was well over a million dollars.

16 MR. KOSMA: I will object again as speculation and  
17 hearsay.

18 BY MR. BEGAKIS:

19 Q When did you leave H2O?

20 A I left H2O in 2007.

21 Q From there, where did you go?

22 A I went to a company called Gathering Storm, which  
23 was an umbrella company of sorts that held specific brands  
24 under it that they either licensed or ran directly.

25 Q And what were some of these brands?

1           A       The main brands were TaylorMade golf accessories,  
2           Adidas golf accessories. We had a U.S. license for Skins  
3           and Arena. And we had Jaco Clothing as well as Looptworks  
4           and some other smaller brands.

5           Q       And what was your title at Gathering Storm?

6           A       I was e-commerce manager.

7           Q       And what was your role in that position as  
8           e-commerce.

9           A       My role was obviously to grow sales through all  
10          of our e-commerce channels, but also, holistically, I had  
11          the role of making sure our marketing communication was  
12          sound for each channel as well as the social media  
13          platforms: Facebook, Twitter -- Instagram was not around  
14          the time, so those were our main driving things. But,  
15          mainly, it was focused on driving sales through our direct  
16          consumer.

17          Q       When you started at Gathering Storm, how big was  
18          the company in terms of commerce revenue?

19          A       The e-commerce revenue for all brands, I mean, we  
20          added brands as I was there so, as a whole, I am not sure  
21          what that number was, but I can tell when I left, it was  
22          over \$3 million.

23          MR. KOSMA: I am going to object to the answer as  
24          hearsay and speculation.

25          ///

1 BY MR. BEGAKIS:

2 Q When did you leave Gathering Storm?

3 A I left Gathering Storm in 2011.

4 Q And from there, where did you go?

5 A I went to Nixon Incorporated. It's a  
6 manufacturer of watches.

7 Q What was your title at Nixon?

8 A E-commerce manager.

9 Q And what was your role in that position?

10 A It was similar to Gathering Storm. It was the  
11 direct consumer running Nixon.com and all our social media  
12 platforms as well as interacting with your independent  
13 online retailers, so different shop owners may have a "dot  
14 com" presence.

15 Q Did you manage anyone in this position?

16 A I had one person directly under me, but mainly, I  
17 worked with internal managers to get my resources  
18 completed as well as major third party vendors that were  
19 website developers, front end to back end, and social  
20 media consultants.

21 Q How big was the company? How big was Nixon in  
22 terms of e-commerce revenue when you were there?

23 A When I arrived, it was 9 million. And upon  
24 leaving Nixon, we were well over 15 million.

25 MR. KOSMA: I am going to object to answer again as

1 speculation, hearsay.

2 BY MR. BEGAKIS:

3 Q When did you leave Nixon?

4 A I left Nixon in 2013, April of 2013.

5 Q And when you left Nixon, where did you go?

6 A I went to Hylete.

7 Q So you started Hylete in April 2013?

8 A Yes.

9 Q What was your title when you started?

10 A E-commerce manager.

11 Q When you started, what did the e-commerce team at  
12 Hylete look like?

13 A It was myself. And that -- as the e-commerce  
14 team, that was it, basically. I had assistance from other  
15 people in the company where it needed, where slack was  
16 needed to be picked up but, essentially, it was a small  
17 team.

18 Jenn Null helped with some of the social media  
19 strategy and it was a group effort kind of with getting  
20 collateral out, et cetera.

21 Q And how big is the team at Hylete today?

22 A My marketing team directly under me consists of  
23 myself, a marketing manager, a photographer, slash,  
24 graphic designer, and a graphic designer.

25 Q How has your role evolved from e-commerce

1 manager?

2 A I am now the director of marketing, so along with  
3 the e-commerce portion of the business, I am also  
4 responsible for the holistic marketing communication of  
5 Hylete from the print creative to our online creative, the  
6 consistency there, our customers facing marketing  
7 communications, all the assets in between.

8 Q What is your role as director of e-commerce?

9 A Well, my role as director of marketing, but as  
10 far as director of e-commerce and directing the  
11 e-commerce, I should say, it consists of maintaining  
12 Hylete.com, so working off of our e-commerce platform. We  
13 are on a Magento eCom platform. It's an open source  
14 platform, which means that we do pay for a yearly  
15 licensing for the enterprising of Magento, but the nuts  
16 and bolt of it are open source, meaning, we can work with  
17 third-party developers to get the aesthetic or  
18 functionality that our website needs.

19 (Applicant's Exhibit B was marked for  
20 identification by the court reporter.)

21 MR. BEGAKIS: Exhibit B.

22 MR. KOSMA: I will object to this exhibit as it's  
23 never been produced before. This is a new document. The  
24 Board's order that we had for sanctions said, no more new  
25 exhibits can be introduced into evidence that have not

1       been produced before.

2               MR. BEGAKIS:    From?

3               MR. KOSMA:    The Board sanction order from the TTAB  
4       says Hylete cannot use any documents that have not been  
5       produced before.   This is a new document.

6               MR. BEGAKIS:   Okay.   Objection noted.

7       BY MR. BEGAKIS:

8               Q       I am handing you what's been marked as Exhibit B.  
9               Do you recognize this document?

10              A       I do.

11              MR. KOSMA:   Just for the record, I'm going to object  
12       to the whole line of testimony also that goes off of this  
13       document.

14       BY MR. BEGAKIS:

15              Q       Okay.   Okay.   What is this document?

16              A       It's a screenshot of hylete.com.

17              Q       So you mentioned the platform that hylete.com  
18       uses.   That's the platform where you run the e-commerce  
19       from the site?

20              A       Yes.   So Magento that I mentioned, it's our  
21       e-commerce platform, but it also contains what's called a  
22       content management system.   And what you see in here is a  
23       screenshot of that home page that's run from Magento's  
24       content management system and all the subsequent product  
25       categories from that.

1 Q How much was the license used at Magento?

2 A It's recently increased to -- it's near -- I  
3 believe it's around \$18,000 a year.

4 Q How much did it cost to create this e-commerce  
5 platform for Hylete?

6 A Well, we've worked with a lot of freelance front  
7 end and back end developers in the past, so it's an  
8 accumulation of that as well as any new development within  
9 the last year. It's well over a hundred thousand dollars  
10 in just this website platform.

11 Q How many views has the website received?

12 A We are going to cap out at about million views  
13 for this year.

14 Q What is the key driver to people viewing and  
15 visiting the site?

16 A It's a combination of things; so we have a chunk  
17 of our social media endeavors, which is our Facebook,  
18 Instagram, Twitter. We also have a strong affiliate  
19 program, which includes strategic partners for Hylete as  
20 well as our train/compete and service league team. And  
21 the train/compete and service league, their individuals,  
22 they hold no ownership of the business or anything. They  
23 are simply brand advocates that fall into a bucket of  
24 highly competitive athlete or a first responder of current  
25 service personnel and an active trainer as well as events



1 on a tangible level. So events where users are prompted  
2 to sign up create accounts or visit hylete.com for added  
3 promotional value.

4 Q Does social media play a factor in driving  
5 viewers to the website?

6 A Yes, very much so.

7 MR. BEGAKIS: C.

8 (Applicant's Exhibit C was marked for  
9 identification by the court reporter.)

10 MR. KOSMA: I am going to object again to this exhibit  
11 as it's never been produced before.

12 MR. WILSON: (Indicating.)

13 MR. BEGAKIS: What's that?

14 MR. WILSON: Can we take a break?

15 MR. BEGAKIS: Sure. Let's a break real quick.

16 THE REPORTER: Off the record.

17 (Recess taken.)

18 MR. BEGAKIS: Back on the record.

19 MR. KOSMA: I just want to make sure my objection is  
20 on the record. Again, this document was not produced  
21 previously. You know, I object to it as never being  
22 produced and also under the TTAB sanction order.

23 BY MR. BEGAKIS:

24 Q Okay. Taking a step back, Mr. Wardlow, I showed  
25 you an exhibit referring to the Hylete website; correct?

1           A     Yeah.

2           Q     Your testimony today, is that based exclusively  
3     on the presented exhibit or on your knowledge of --

4           A     It's my knowledge.

5           Q     And with regards to the exhibit that was just  
6     introduced as Exhibit C, which I am handing you now that  
7     was objected to, the questions I am going to ask you, are  
8     they based on this exhibit exclusively or your knowledge  
9     as director of marketing and e-commerce of hylete.com?

10          A     Based on my knowledge. I know the system inside  
11     and out.

12          Q     Okay. Great.

13          MR. KOSMA: I am also going to object to the testimony  
14     that Mr. Wardlow gave to you. It's new information that  
15     was previously requested under our document request,  
16     interrogatory request that were the reason for the  
17     sanctions under the TTAB order.

18                 If you want me to keep it as a standing  
19     objection, just to keep it easy, we can do that.

20          MR. BEGAKIS: It's a standing objection as to new  
21     exhibits.

22          MR. KOSMA: And for new testimony that was previously  
23     requested, information on -- I will keep a standing  
24     objection if you want to keep this.

25          MR. BEGAKIS: Sure.

1 BY MR. BEGAKIS:

2 Q Mr. Wardlow, how many followers does the Hylete  
3 Facebook page have?

4 A It grows every day. Last time I checked was  
5 150,000.

6 Q Can you tell me, this week, how many people on  
7 Facebook Hylete's posts reached?

8 A That is a good question. I mean, so we have  
9 different kinds of posts. We have our organic posts where  
10 somebody posts to our timeline, which will reach only the  
11 people that like our page. And the reach is only as  
12 relevant as the content, so if the content is good, then  
13 the reach will be higher in the organic field.

14 We also boost post, which typically, they come in  
15 the form of an offer or a promotion or possibly an article  
16 that we really want to get awareness to, and so boosting  
17 said posts leads to more drive towards, not just our  
18 organic traffic, and -- so that can be targeted towards  
19 users outside Facebook.

20 Q How would you target those boosted posts?

21 A Through a Facebook ad manager. So Facebook has  
22 an ad manager in which I can either create an offer, I can  
23 specify specific conversion tasks I want the user to  
24 complete, or simply just bring awareness to a certain  
25 article or content.

1           If we are posting an offer, it's based off the  
2           claims of the offer and I pay Facebook based off the  
3           claims.

4           If I am directing users to a conversion task on  
5           hylete.com, it's based off the impression and/or the  
6           clicks that that content receives.

7           Q     Can you target individuals with boosted posts?

8           A     You can target individuals with boosted posts.

9           Q     How would you do that?

10          A     Inside the ad manager, we can target users to  
11          just like our page, users who like our page and their  
12          friends. We can get down to -- we use an e-mail service  
13          provider called MailChimp. It collects all our e-mail  
14          list, segments the data and sends out e-mails for us. We  
15          can actually import these lists per segment into  
16          Facebook's ad creator and send communication directly to  
17          those users based off the data they provide.

18          And there's also another tool in there. It's  
19          called "Interests," in which we can target a user based  
20          off their interest so based off of keywords, essentially.

21          Q     So what would be, for example, a keyword that  
22          Hylete would use?

23          A     So the keyword that we use -- the keywords need  
24          to be broad enough to have a large audience, so, you know,  
25          I wouldn't -- the keywords are not specific. They are

1 very broad, casting -- trying to cast the largest net  
2 possible to warrant the post clicks through our contents.  
3 So one of the keywords we often use is CrossFit as an  
4 interest or obstacle course racing as an interest or mud  
5 run as an interest, olympic weightlifting as an interest,  
6 anything that is thought of as a broad interest.

7 Q So if someone has an interest in CrossFit, they  
8 could receive -- they could see sponsor boosted posts from  
9 Hylete; correct?

10 A Yes. If they have an interest in CrossFit,  
11 there's a potential based on me selecting that interest in  
12 the ad manager's interest field, that they could see it.  
13 The likelihood of them seeing it will increase if it  
14 correlates with the -- them liking our page and liking  
15 CrossFit as an interest or being interested in CrossFit, I  
16 should -- not "liking" CrossFit specifically, and  
17 whether -- or if their friend likes our page, and they  
18 have an interest in CrossFit.

19 Q Is there any other way an individual would see  
20 hylete.com advertising on Facebook?

21 A There is actually. We actually -- we use a  
22 third-party resource. It's a software service called  
23 AdRoll. And what AdRoll is, it's a -- it's a pixel,  
24 tracking pixel on our website that collects data from the  
25 user when they land on our website and it's not invasive

1 data. It's simply data that tracks them across our  
2 website, so depending on what interest page they came  
3 from, what exit page they left from, and also what portion  
4 the shopping cart area, if they interact with our shopping  
5 cart. And it takes that data and actually presents what's  
6 called "retargeting marketing ads" across AdRoll's  
7 network. And AdRoll's network is actually defined as all  
8 of the joint ventures on the web. So if I had a website  
9 and I worked with AdRoll for them to place a banner, a web  
10 banner on their website -- on my website, AdRoll will  
11 actually pay me for that space. And so if they travel --  
12 if the user travels to hylete.com, travels to said  
13 website, then they will actually see a hylete.com ad, and  
14 that goes for Facebook as well. So that ad can be shown  
15 to them whether they -- whether we targeted them through  
16 the ad creation as well.

17 Q Has Facebook advertising -- has Facebook  
18 advertising always been this way?

19 A No. It's evolved a lot over the last few years,  
20 mainly due to Facebook trying to clean up your timeline,  
21 if you will. So Facebook made it so there were -- there  
22 was a consensus that there was too many things going on  
23 people's timelines.

24 MR. KOSMA: Objection, speculation, hearsay.

25 THE WITNESS: And Facebook, trying to clean that up,

1 they only want to present things that are relevant to you,  
2 so they built an algorithm that will show you relevant  
3 content. So what that means for advertisers, that if  
4 you're not extremely relevant in their space, you need to  
5 pay a little more to be customer-facing or user-facing, if  
6 you will.

7 MR. BEGAKIS: Understood.

8 MR. KOSMA: I am going to object to that whole answer.  
9 Lacks foundation, speculation.

10 MR. BEGAKIS: Lacks foundation?

11 MR. KOSMA: And hearsay.

12 MR. BEGAKIS: Okay. I'll also put on the record that  
13 Exhibits A and B are matter of public record.

14 Introducing into evidence exhibit -- excuse me.  
15 Exhibits B and C are matter of public record.

16 Introducing into evidence, Exhibit D.  
17 (Applicant's Exhibit D was marked for  
18 identification by the court reporter.)

19 MR. KOSMA: I would like to point out that Exhibit B  
20 seems to be coming from a user account that has access to  
21 the Hylete Facebook page that includes nonpublic  
22 information.

23 MR. WILSON: (Conferring with counsel in sotto voce.)

24 MR. BEGAKIS: I will also put on record that all --  
25 I take that back. Strike that.

1 BY MR. BEGAKIS:

2 Q All right. Mr. Wardlow, I am handing you what  
3 has been marked as Exhibit D into evidence.

4 Do you recognize this document?

5 A That is Hylete's Instagram page.

6 Q From your knowledge, not relying on this exhibit,  
7 how many followers does Hylete's Instagram page have?

8 A We are at 21,000.

9 Q Does Hylete's Instagram page help drive users to  
10 the Hylete website?

11 A It does.

12 Q In what way?

13 A There's a couple of different ways. We -- we  
14 have our organic community that likes our Instagram page.  
15 We also -- amongst our other platforms, so Facebook and  
16 Twitter, we often drive traffic back to our Instagram  
17 page, trying to create that, again, that holistic feel.  
18 We love to have every user on every platform that Hylete  
19 is part of.

20 We also have a tool that we call a third party --  
21 another third-party resource called ReadyPulse, which  
22 ReadyPulse is a software -- is a service that pulls data  
23 based off specific hash tags into an album creator to  
24 which we can then create albums and share them on  
25 different platforms. So on our website, currently, we



1 have an album on our homepage that pulls Instagram -- not  
2 with our Instagram photos, but Instagram photos of users  
3 that have either tagged us or mentioned us in a post that  
4 we found to be relevant to us and we are hosting them. We  
5 also have a mechanism called "like it, want it," to where  
6 a user can shop the Instagram feed.

7 Q How does that work when you say they shop the  
8 Instagram feed?

9 A We direct the user to our Instagram page with the  
10 promise that anything they see on Instagram page, they can  
11 actually shop it. So by clicking a link on our profile,  
12 they will be presented with a page identical to our  
13 Instagram page in which, whatever product is present or  
14 showcased in the image, they can actually click on it and  
15 go back to hylete.com.

16 Q One of the things about the Instagram page, we  
17 discussed previously a change in Facebook's algorithm.

18 Has there been anything like that regarding  
19 Instagram?

20 A Not that I know of. I have actually done  
21 research recently on it and I haven't found anything that  
22 would -- released by Instagram or Facebook that would say  
23 that's true.

24 MR. BEGAKIS: I am handing what has been marked into  
25 evidence as Exhibit E.

1 (Applicant's Exhibit E was marked for  
2 identification by the court reporter.)

3 BY MR. BEGAKIS:

4 Q Do you recognize this?

5 A I do.

6 Q What is this document?

7 A This is the testimony of Ian Jentgen.

8 Q I will direct you to line 12 of the first page.  
9 Can you read from line 12 to line 25 ending at  
10 the period?

11 A (Reading:)

12 "So we stopped using Facebook for  
13 Hybrid Athletics primarily as it  
14 relates to -- for a long time, we  
15 stopped using it for anything just  
16 because we are not reaching the people  
17 who like our page.

18 "And why aren't you reaching the  
19 people?"

20 That was a question.

21 "ANSWER: Because the algorithm  
22 changed, so it used to be organic and,  
23 now, we would reach -- and we would  
24 reach if we were logged in at Facebook  
25 at the time when we posted, you would

1           see it. Now, it's not like that. And  
2           so we're not reaching our members with  
3           the posts that we're doing, so it's  
4           kind of not worth the same."

5           Q     Based on your extensive experience in e-commerce  
6           in social media marketing, what is your opinion of that  
7           statement?

8           A     My opinion of it is two-fold. One -- so,  
9           Facebook's change, if you will, was related to, again,  
10          relevant content, so it wasn't about killing organic  
11          content. Organic content is the most important piece of  
12          Facebook. You cannot survive as a brand just by throwing  
13          money at it and paying for it to reach people. So  
14          relevant content is what this so-called algorithm really  
15          focuses on. It is relevant to the individual that's going  
16          to be shown. And if it's not, Facebook chooses not to  
17          show it to that individual. What Facebook posts do -- or  
18          boosts, I should say. I apologize.

19          Facebook's boost gives a brand the -- the  
20          opportunity with that content that was seen as not  
21          relevant enough to put on the user's timeline, gave the  
22          brand the opportunity to boost said post giving money or  
23          paying for an ad to then show up in that user's timeline.

24          Q     In your opinion, as someone with extensive  
25          experience in online marketing e-commerce, is it important

1 to boost posts on Facebook?

2 A It's extremely important to boost posts on  
3 Facebook.

4 Q Why is it extremely important?

5 A Because sometimes the content you put out is not  
6 going to be as relevant to the user as you'd like it to  
7 be. There's power in content, but there's also power in  
8 promotion, and there's power in being product-centric, and  
9 sometimes that just needs a little bit of oomph to get in  
10 front of the right user at the right time.

11 I would like to add, too, that boosting a post,  
12 you are actually added to -- there are certain ad-relevant  
13 sections of Facebook typically to the side of Facebook  
14 when you are on a desktop, and it's folded into Facebook  
15 on the mobile, but present as a suggested post. So  
16 boosted ads will often show up differently from organic  
17 ads. I'm sorry, not organic ads, but organic posts.

18 MR. KOSMA: I'm going to put an objection to this line  
19 of testimony: That this document seems to be modified  
20 from its original form. This is also just a partial  
21 portion of Mr. Jentgen's transcript. And I will object,  
22 hearsay and speculation.

23 MR. BEGAKIS: To Counsel and to the court reporter.

24 (Applicant's Exhibit F was marked for  
25 identification by the court reporter.)

1 BY MR. BEGAKIS:

2 Q Mr. Wardlow, I am handing you what's been marked  
3 into evidence as Exhibit F.

4 Do you recognize this document?

5 A That is the Hybrid Athletics page.

6 Q As someone with extensive experience in online  
7 marketing, e-commerce, what is your impression from  
8 looking at this web page or a screenshot of this web page,  
9 rather?

10 A My opinion of it -- my expert opinion of it is  
11 that it is --

12 MR. KOSMA: Objection. The witness is not an expert.  
13 Calls for speculation, narrative, and hearsay.

14 THE WITNESS: It looks very generic. It looks like a  
15 template. It looks like a very low cost e-commerce  
16 template.

17 (Applicant's Exhibit G was marked for  
18 identification by the court reporter.)

19 BY MR. BEGAKIS:

20 Q Mr. Wardlow, I am handing you what has been  
21 marked into evidence as Exhibit G.

22 Do you recognize this document?

23 A I do.

24 Q What is this document?

25 A It is a comparison between web traffic from

1 SimilarWeb.com for Hylete and Hybrid Athletics.

2 Q Does SimilarWeb.com provide this information to  
3 the public?

4 A It does.

5 Q So if I went to SimilarWeb.com right now, I could  
6 pull this up?

7 A Yes.

8 Q Directing you to the right corner of the exhibit.  
9 How many visits does SimilarWeb.com say that  
10 Hylete has received?

11 A From April to September, Hylete: 30,000.

12 Q And how many visits has hybridathletics.com  
13 received?

14 A Hybrid Athletics is 500.

15 MR. KOSMA: I will object to the answer. It doesn't  
16 actually say what the website is that it's comparing to.  
17 And I just don't know how you could testify when the  
18 website is not even shown.

19 BY MR. BEGAKIS:

20 Q Mr. Wardlow, explain for the record exactly what  
21 this document is displaying.

22 A It displays hylete.com versus  
23 hybridathletics.com -- hybridathleticsapparel.com.

24 Q In comparing -- when you say, "hylete.com versus  
25 hybridathleticsapparel.com," what are they comparing it

1 to?

2 A They are comparing visitors, estimated monthly  
3 visitors.

4 Q So this is saying that hylete.com has 30,000  
5 visitors in a particular period of time?

6 A Yes.

7 Q Versus hybridathletics.com having 500 visitors at  
8 a particular time?

9 MR. KOSMA: Objection. Again, you said,  
10 "hybridathletics.com." I don't know where it came from.  
11 I don't see the full website on this to show what is being  
12 compared, so I am objecting to this whole line of  
13 testimony.

14 MR. BEGAKIS: For the record, I apologize. I meant  
15 hybridathleticsapparel.com versus hylete.com and the  
16 number of visitors.

17 (Applicant's Exhibit H was marked for  
18 identification by the court reporter.)

19 BY MR. BEGAKIS:

20 Q Mr. Wardlow, I am handing you what has been  
21 marked into evidence as Exhibit H.

22 Do you recognize this document?

23 A I do.

24 Q What is this document?

25 A It is a Google Trends screenshot.

1 Q Is Google Trends accessible to the public?

2 A Yes.

3 Q So if I went to Google Trends right now, I could  
4 input various keywords and see how they are trending?

5 A You could put any keyword you want and see how  
6 they're trending.

7 Q This exhibit refers to what keywords?

8 A Hylete compared to Hybrid Athletics.

9 Q And what is the graph displaying?

10 A It displays the Hylete keyword as having growth,  
11 starting a little before 2013 there and growing as well as  
12 the projected growth past 2015.

13 Q And what about the Hybrid Athletics keyword?

14 A It started somewhere before 2011 and  
15 around -- it's projecting in negative, downward turn past  
16 2015.

17 Q In your opinion, as someone with extensive  
18 experience in online marketing and social media marketing,  
19 what does this graph tell you?

20 MR. KOSMA: Objection, speculation.

21 THE WITNESS: It tells me that the keyword "Hylete" is  
22 trending in an upward manner and that Hybrid Athletics is  
23 trending down, simply.

24 BY MR. BEGAKIS:

25 Q And is there any importance to that?



1           A     Well, this correlates to Google searches, so the  
2     number of users that are putting that specific keyword  
3     into Google, that's what Google Trends is referencing, so  
4     it's not referencing traffic per se, but just hits to hits  
5     network with those specific keywords.

6           And this is telling me -- I deal a lot with, you  
7     know, correlations, with a lot of positive correlation,  
8     negative correlation, and also, typically, what I will  
9     fall with is zero correlation. And the reason I'll fall  
10    on zero correlation, more often than not, is because  
11    without specific evidence that the two data points are  
12    related, you need to go to zero correlation, or else, you  
13    could be making the wrong decision. And this tells me  
14    that there is zero correlation in these two keywords as  
15    Hylete continues to grow and Hybrid Athletics goes down.

16                   (Applicant's Exhibit I was marked for  
17                   identification by the court reporter.)

18   BY MR. BEGAKIS:

19           Q     Mr. Wardlow, I am handing you what has been  
20    marked into evidence as Exhibit I.

21                   Do you recognize this document?

22           A     I do.

23           Q     What is this document?

24           A     The Google Trends screenshot of compared  
25    keywords: "Hylete" and "Rob Orlando."

1           Q     Just so we are clear for the record, I can access  
2 Google Trends and input these two keywords to get this  
3 information; correct?

4           A     Yes. It's open to the public.

5           Q     And what does this graph say or indicate?

6           A     This graph tells me that, again, the Hylete  
7 keyword is trending up and Rob Orlando is trending down,  
8 which is interesting because Rob Orlando keyword trending  
9 down seems to have the same pattern as the  
10 Hybrid Athletics trending down in Exhibit H. So that's  
11 what I would call a positive correlation between those two  
12 keywords, Hybrid Athletics and Rob Orlando.

13           MR. KOSMA: I'm just going to object to this whole  
14 line of questioning as being irrelevant.

15                     (Applicant's Exhibit J was marked for  
16 identification by the court reporter.)

17 BY MR. BEGAKIS:

18           Q     Mr. Wardlow, I will be handing you what has been  
19 marked into evidence as Exhibit J.

20           MR. BEGAKIS: And, actually, Counsel, the standing  
21 objection is not applicable to this exhibit. This exhibit  
22 has been discovered.

23           MR. KOSMA: I have a standing objection throughout the  
24 deposition.

25           MR. BEGAKIS: Okay. Noted.

1 BY MR. BEGAKIS:

2 Q Handing you Exhibit J, or what has been marked  
3 into evidence as Exhibit J.

4 Do you recognize this document?

5 A I do.

6 Q What is this document?

7 A It's a document which presents to me with the  
8 Hylete logo and the Hybrid Athletics logo.

9 Q Based on your experience, working with brands  
10 over the course of your extensive career in marketing and  
11 e-commerce, do you believe that these logos look  
12 confusingly similar?

13 A I do not think they look confusingly similar.

14 Q How do these logos differ in your view?

15 A Well, starting from the bottom to the top, with  
16 the Hylete logo, it's a defined point, and there's  
17 very -- there's a curved aspect to it with a defined,  
18 almost circular object. You can practically connect the  
19 tips and create a full circle.

20 With the Hybrid Athletics logo, there's no  
21 curvature, similar curvature. There are no defined  
22 points. And there's also a thick border outlining, which  
23 I'm going to say is outlining the interior of the logo.  
24 It's hard for me to tell if these are two separate objects  
25 or one constant object here. Moving to the top half of

1 the Hylete logo, again, a very defined circular pattern,  
2 with a defined point that, if going to completion, would  
3 complete the circle at the top of the logo.

4 When I move to the Hybrid Athletics logo, there  
5 is no circular definition. The two points would actually  
6 create a triangle at the top, not a circle. Again,  
7 there's a thick border of some sort around with no defined  
8 edge at the end of each side. And so dividing the Hylete  
9 logo straight down the middle, it has a defined edge with  
10 defined curvature around the edge. The Hybrid Athletics  
11 logo is broken up by a line, a bordering line that points  
12 at the end therein starting a new portion of the logo  
13 which has a defined curve and straight sides. I don't see  
14 any similarities to these at all.

15 Q Thank you, Mr. Wardlow.

16 Based on your extensive experience working with  
17 brands and in marketing, do you believe these two logos  
18 create a distinctive brand impression?

19 A I do. They are distinct.

20 MR. KOSMA: I will object as speculation.

21 (Applicant's Exhibit K was marked for  
22 identification by the court reporter.)

23 BY MR. BEGAKIS:

24 Q Mr. Wardlow, I am handing you what has been  
25 marked into evidence as Exhibit K.

1 Do you recognize this document?

2 A I do.

3 Q What is this document?

4 A This is a document with four distinct brand logos  
5 laid out in a row.

6 Q Have you seen all these logos before?

7 A I have.

8 Q In your experience working with an athletic  
9 apparel brand, have you seen athletes on social media,  
10 Facebook, or even in person, wearing the Under Armour  
11 logo?

12 A I have.

13 Q And how about the Hurley logo?

14 A I have.

15 Q For the record, what are the other two logos that  
16 are on that page?

17 A The other two logos besides the Hurley and Under  
18 Armour logo you mentioned are the Hylete logo to the far  
19 left and the Hybrid Athletics logo between Under Armour  
20 and Hurley.

21 Q Thank you, Mr. Wardlow.

22 MR. BEGAKIS: We will take a five-minute break.

23 (Recess taken.)

24 MR. BEGAKIS: Back on the record.

25 ///

1 (Applicant's Exhibit L was marked for  
2 identification by the court reporter.)

3 BY MR. BEGAKIS:

4 Q Mr. Wardlow, I am handing you what has been  
5 marked as Exhibit L.

6 Do you recognize this document?

7 A I do.

8 Q What is this document?

9 A That is a printout of our online exit survey  
10 posted for users after they complete a purchase. They are  
11 asked to voluntarily take an exit survey.

12 Q Do you know roughly how many purchasers  
13 hylete.com has had?

14 A Over a hundred thousand.

15 Q And do you know roughly how many purchasers have  
16 taken this exit survey?

17 A About 35,000.

18 Q Roughly, 35 percent, you would say?

19 A Yes.

20 Q Can you read to me the question-and-answer  
21 options on the right of the first page of the exit survey?

22 A "What influence today's purchase?"

23 Q And the answer options?

24 A The answer options are:

25 One: "General search query, e.g. Google Search."

1 Two: "WOD Talk Magazine."

2 Three: "Event, e.g. CrossFit."

3 Four: "Friend," slash, "Referral."

4 Five: "I am a return customer."

5 Six: "Coach," slash, "Trainer."

6 Seven: "Social media promotion, e.g. Facebook,  
7 Twitter."

8 Eight: "Social media posts."

9 Nine: "My Mad Method Magazine," slash,  
10 "Website."

11 And the final field is an open field marked  
12 "Other."

13 Q And what is this open field for?

14 A Open field is for users, if they do not see an  
15 answer that correlates to their answer, they will use the  
16 "Other" field to mainly type in their answer.

17 Q What is the importance of this question and the  
18 answer that a purchaser provides?

19 A It has a lot of important factors. One is just  
20 trying to figure out if the marketing endeavors that were  
21 heavily invested in are working, so the WOD Talk Magazines  
22 of the world, which is one of our strategic partners. So  
23 they are a major customer acquisition for us and we use  
24 them for content as well. So making sure that users that  
25 are purchasing, if they volunteer to use this exit survey,

1 if they select WOD Talk Magazine, we can deduce that our  
2 advertising knowledge are working for them.

3 MR. KOSMA: I am going to object to this line of  
4 testimony as being irrelevant. Again, this document has  
5 never been produced before. This is the first time I have  
6 seen it.

7 MR. BEGAKIS: Addressing that objection, for the  
8 record, the TTAB's order was with regards to documents  
9 produced related to interrogatory questions. And there  
10 are no interrogatory questions that were proposed that  
11 related to this exhibit nor any of the other exhibits that  
12 have been produced today, Irregardless of the fact -- or  
13 irrespective of the fact that most of those other exhibits  
14 are examples of publish record.

15 MR. KOSMA: The TTAB's order was on discovery request  
16 as well as interrogatory request -- document request and  
17 interrogatory request. I mean, standing objection.

18 Again, this whole line of questioning is  
19 irrelevant and based on documents that have not been  
20 produced before.

21 MR. BEGAKIS: Just one more document you can object  
22 to.

23 (Applicant's Exhibit M was marked for  
24 identification by the court reporter.)

25 ///



1 BY MR. BEGAKIS:

2 Q Mr. Wardlow, you have been handed what has been  
3 marked into evidence as Exhibit M.

4 Do you recognize this stack of documents?

5 A I do.

6 Q What is this stack of document?

7 A These are printouts of the questionnaire, the  
8 exit survey, I should say.

9 MR. BEGAKIS: Excuse me, Mr. Wardlow. Let the record  
10 show that Opposing Counsel is taking screenshots of the  
11 documents that are being produced in the middle of the  
12 deposition.

13 Continue.

14 You were taking a picture.

15 MR. KOSMA: No, I wasn't.

16 MR. BEGAKIS: I want the record to show that anyway.

17 BY MR. BEGAKIS:

18 Q Mr. Wardlow, what is this document or stack of  
19 documents rather?

20 A This is a printout to the answers given on our  
21 exit survey.

22 Q Have you reviewed the contents of this collection  
23 of documents?

24 A I have. I have reviewed them online, not the  
25 physical copies.

1 Q And how did you review them online?

2 A Within the software that we build these exit  
3 surveys with, there is a universal search field in there  
4 as well as a reporting system in which you can segment  
5 them out.

6 Q So with the universal search field, you can input  
7 WOD Talk Magazine to see how many people have input  
8 WOD Talk as a reason why they purchased a product;  
9 correct?

10 A Exactly.

11 MR. KOSMA: Again, I am going to object to this whole  
12 line of questioning as documents that have never been  
13 produced before. I've never had a chance to look at them,  
14 so he's testifying on --

15 MR. BEGAKIS: You made your objection. It's a  
16 standing objection.

17 MR. KOSMA: Okay.

18 MR. BEGAKIS: That's what a standing objection is.

19 BY MR. BEGAKIS:

20 Q Mr. Wardlow, in your searching for different  
21 results on the website, did you find any mentions of, say,  
22 Rob Wolf?

23 A Rob Wolf, yes, he is a strategic partner of ours  
24 and people have entered him in the "Other" field.

25 Q So even though he's not a specific field, a

1 button on that question, people have inputted Rob Wolf's  
2 name --

3 A Yes.

4 Q -- as a reason why they purchased Hylete?

5 A As a reason -- influencing their purchase, yes.

6 Q Correct. Influencing their purchase.

7 Did you, in your review of this information,  
8 search for Hybrid Athletics?

9 A I did.

10 Q And what did you find?

11 A I found nothing, zero results.

12 Q Zero results, meaning, nobody input in the  
13 "Other" field, "Hybrid Athletics" as an influence in their  
14 purchase of Hylete products?

15 A Correct.

16 Q Did you search for Rob Orlando?

17 A I did.

18 Q What did you find?

19 A Zero results.

20 Q Meaning, that nobody inputted Rob Orlando as a  
21 reason for influencing their purchase of Hylete products;  
22 correct?

23 A Correct.

24 Q Thank you.

25 MR. BEGAKIS: No further questions.

1 MR. KOSMA: Take about five minutes?

2 MR. BEGAKIS: Okay.

3 (Recess taken.)

4  
5 EXAMINATION

6 BY MR. KOSMA:

7 Q Mr. Wardlow, you stated you run the Facebook page  
8 for Hylete; is that correct?

9 A I run the Facebook page, and I have help  
10 internally, yes.

11 Q And is there a process for monitoring comments on  
12 Hylete's Facebook page?

13 MR. BEGAKIS: Objection, leading the witness.

14 THE WITNESS: What do you mean by "process"?

15 BY MR. KOSMA:

16 Q If there is a negative comment on Hylete's web  
17 page or disparaging comment, is there a process that  
18 Hylete has in place to delete them, or what happens?

19 A No, we do not delete.

20 Q No comments you delete off the Facebook page or  
21 Instagram page?

22 MR. BEGAKIS: Objection, asked and answered.

23 BY MR. KOSMA:

24 Q You can answer the question.

25 MR. BEGAKIS: Objection, asked and answered. He said,

1 "No."

2 MR. KOSMA: Are you instructing the witness not to  
3 answer the question?

4 MR. BEGAKIS: No. I'm objecting, "Asked and  
5 answered." His answer was "No." We can have the court  
6 reporter read back his answer if you'd like.

7 BY MR. KOSMA:

8 Q So does Hylete ever delete comments off their  
9 Facebook page?

10 A It's our process not to delete comments.

11 Q Any comments deleted off the Instagram page?

12 A No.

13 Q In your experience, has anyone ever indicated  
14 that there was a confusion between Hybrid Athletics and  
15 Hylete on Hylete social media?

16 A Not that I'm aware of, no.

17 (Opposer's Exhibit N was marked for  
18 identification by the court reporter.)

19 BY MR. KOSMA:

20 Q Mr. Wardlow, I have handed you a July 30 --

21 MR. BEGAKIS: Do we get a copy?

22 MR. KOSMA: I gave you two.

23 THE REPORTER: Oh, sorry.

24 MR. BEGAKIS: And to whatever extent -- although, we  
25 deposit that there is no valid objection in terms of

1 introducing new evidence. But to whatever extent, that is  
2 a valid objection. We object to that with regards to this  
3 document as well.

4 BY MR. KOSMA:

5 Q Mr. Wardlow, I passed you a document that is a  
6 July 30, 2013 post on Hylete's Facebook page.

7 Have you seen this post before?

8 A I have seen the content of the post, yes,  
9 extended by popular demand.

10 Q If we look down in the comment section, there's a  
11 comment by Tony Schmidt.

12 Do you see that?

13 A I do.

14 Q And what does that comment say?

15 A "I hate to be negative, but it looks like  
16 trademark infringement," hash tag "Hybrid Athletics."  
17 "Their logo looks very similar," hash tag "boycott  
18 Hylete," exclamation point.

19 Q Do you remember seeing that comment?

20 A I do not.

21 MR. BEGAKIS: I will make my objection, with regards  
22 to all new exhibits introduced, a standing one.

23 (Opposer's Exhibit O was marked for  
24 identification by the court reporter.)

25 ///

1 BY MR. KOSMA:

2 Q Mr. Wardlow, I am passing you what's been marked  
3 Exhibit O into evidence. There is a July 9, 2014 post on  
4 Hylete's Facebook page.

5 Are you familiar with this post?

6 A It looks familiar.

7 Q There's a comment in the comment section by  
8 Rob Faber.

9 Can you read that comment, please.

10 A Where am I -- am I looking?

11 Q Halfway down the comment section, the person's  
12 name is Rob Faber.

13 A "I am confused. Is Hylete affiliated with Hybrid  
14 Athletics? Same logo and essentially a shortened combined  
15 name," period.

16 Q Have you seen that comment before?

17 A I have not.

18 Q And this is from Hylete's Facebook page?

19 A Yes.

20 Q Mr. Wardlow, you are in charge of marketing and  
21 does that include content of the marketing?

22 A Yes.

23 Q Are you in charge of the pictures that are  
24 displaying marketing materials?

25 A Yes.

1 Q Is there anyone else responsible for those types  
2 of pictures?

3 A As far as the creation of the pictures?

4 Q Or the specific pictures put into a marketing  
5 campaign.

6 A It's a group effort combined with our  
7 photographer and our graphic designer and then I sign off  
8 on the creative desk.

9 Q So as the director of marketing, you have the  
10 final say in what goes into any marketing campaign?

11 A The creative and the messaging, yes.

12 Q How long have you been aware of the Hybrid  
13 Athletics and Hylete trademark dispute?

14 A Over a year now. I don't remember the exact  
15 instance in where I became familiar with it, but it was  
16 brought to my attention.

17 Q Have you ever used a piece of Hybrid Athletics  
18 equipment with a Hybrid "H" in any of your marketing  
19 materials?

20 MR. BEGAKIS: Objection, leading the witness and calls  
21 for speculation.

22 MR. KOSMA: I am not leading the witness, but --

23 THE WITNESS: Can you repeat the question?

24 BY MR. KOSMA:

25 Q Have you ever used a piece of Hybrid Athletics



1 equipment that had the Hybrid Athletics "H" on it in any  
2 of your marketing materials?

3 MR. BEGAKIS: Objection, calls for speculation.

4 THE WITNESS: Not to my knowledge.

5 (Opposer's Exhibit P was marked for  
6 identification by the court reporter.)

7 BY MR. KOSMA:

8 Q Mr. Wardlow, I am passing you a picture of a  
9 Facebook page. On the bottom right-hand corner, there's  
10 an advertisement for Hylete.

11 Are you familiar with that advertisement?

12 A Yes.

13 Q When did that advertisement run?

14 MR. BEGAKIS: Objection, calls for speculation.

15 THE WITNESS: I believe under two weeks ago, maybe.

16 BY MR. KOSMA:

17 Q And you signed off on this advertisement?

18 A I did.

19 Q Who is the athlete on this page?

20 A This is Danny Nichols, our sponsored athlete.

21 Q Did you notice that Danny Nichols is holding a  
22 Hybrid Athletics stone mold with a Hybrid Athletics "H" on  
23 it?

24 MR. BEGAKIS: Objection, calls for speculation.

25 THE WITNESS: I see a ball there. I don't know if

1 it's Hybrid Athletics.

2 (Opposer's Exhibit Q was marked for  
3 identification by the court reporter.)

4 BY MR. KOSMA:

5 Q I am handing you what's been marked as Exhibit Q  
6 into evidence. This is a closer picture of that, a  
7 picture of Danny Nichols; is that correct?

8 A Yes.

9 Q Do you see the Hybrid Athletics' stone being held  
10 by Mr. Nichols in Hylete's advertisement?

11 MR. BEGAKIS: Objection, calls for speculation.

12 THE WITNESS: I'm not familiar with Hybrid Athletics'  
13 product, so I don't know if it's a Hybrid Athletics'  
14 stone.

15 BY MR. KOSMA:

16 Q Do you see the "H" in the top right-hand corner  
17 of the stone?

18 MR. BEGAKIS: Objection, calls for speculation.

19 THE WITNESS: I see an indentation. I don't know what  
20 it is. It's unclear.

21 BY MR. KOSMA:

22 Q Mr. Wardlow, how long did you work for Jaco  
23 Clothing when you were with Gathering Storm?

24 MR. BEGAKIS: Objection, irrelevant.

25 THE WITNESS: I was at Gathering Storm 2009 to 2011.

1 In that time, I worked with Jaco.

2 BY MR. KOSMA:

3 Q What did you do with Jaco?

4 A I did the maintenance of the website as well as  
5 the e-commerce strategy and marketing content,  
6 customer-facing marketing content for Jaco.

7 MR. BEGAKIS: Objection. This question has been asked  
8 and answered.

9 BY MR. KOSMA:

10 Q Prior to working with Hylete, had you ever heard  
11 of Hybrid Athletics?

12 A No.

13 MR. KOSMA: No further questions.

14 MR. WILSON: Let's take a break.

15 MR. BEGAKIS: Five-minute break.

16 (Recess taken.)

17 MR. BEGAKIS: Back on the record.

18

19 FURTHER EXAMINATION

20 BY MR. BEGAKIS:

21 Q Mr. Wardlow, with regards to Hylete Facebook  
22 posts, do you monitor comments and replies to any of those  
23 posts?

24 A I don't personally.

25 Q Who does?

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A Customer service.  
MR. BEGAKIS: Thank you. No further questions.

(The deposition concluded at 10:22 a.m.)

\* \* \*

DECLARATION UNDER PENALTY OF PERJURY

I, James Wardlow, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on Tuesday, October 27, 2015; that I have made such corrections as appear noted on the Deposition Errata Page, attached hereto, signed by me; that my testimony as contained herein, as corrected, is true and correct.

Dated this December\_\_\_\_ day of \_\_4th\_\_\_\_\_,  
2015, at \_\_\_\_\_ 2:56pm \_\_\_\_\_,  
California.

*James Wardlow*

James Wardlow

DEPOSITION ERRATA SHEET

Page No. 9 Line No. 20 Change: Left H2O

Audio in 2009 \_\_\_\_\_

Reason for change: Currently reads 2007. I either misspoke  
or it was dictated

incorrectly. \_\_\_\_\_ Page

No. \_\_\_\_\_ Line No. \_\_\_\_\_

Change: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_

Change: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_

Change: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_

Change: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_

Change: \_\_\_\_\_

Reason for change: \_\_\_\_\_

Page No. \_\_\_\_\_ Line No. \_\_\_\_\_

Change: \_\_\_\_\_

Reason for change: \_\_\_\_\_

James Wardlow

Dated

1 STATE OF CALIFORNIA ) ss:  
2 COUNTY OF SAN DIEGO )  
3

4 I, Karla L. Beard, Certified Shorthand  
5 Reporter of the State of California, do hereby certify:

6 That prior to being examined, the witness in the  
7 foregoing proceedings was by me duly sworn to testify to  
8 the truth, the whole truth, and nothing but the truth;

9 That said proceedings were taken before me at the  
10 time and place therein set forth, and were taken down  
11 by me in shorthand and thereafter transcribed into  
12 typewriting under my direction and supervision.

13 I further certify that I am neither counsel  
14 for, nor related to, any party to said proceedings, nor  
15 in any way interested in the outcome thereof.

16

17 IN WITNESS WHEREOF, I have hereunto subscribed my  
18 name.

19

20 Dated: NOV 11 2015


21

22

23

24

25

  
Karla L. Beard, CSR No. 13036

**James Wardlow**  
**October 27, 2015**

<b>A</b>			
<b>a.m</b> 1:16 6:2 51:3	<b>APPEARANCES</b> 2:1	<b>ball</b> 48:25	36:4, 9
<b>access</b> 22:20 33:1	<b>applicable</b> 33:21	<b>banner</b> 21:9, 10	<b>brands</b> 9:23, 25 10:1
<b>accessible</b> 31:1	<b>Applicant</b> 1:8 2:2	<b>based</b> 17:2, 8, 10	10:4, 19, 20 34:9
<b>accessories</b> 10:1, 2	<b>Applicant's</b> 4:8, 9	19:1, 2, 5, 17, 19, 20	35:17
<b>account</b> 22:20	5:3 7:8, 16 13:19	20:11 23:23 26:5	<b>break</b> 16:14, 15
<b>accounts</b> 16:2	16:8 22:17 25:1	34:9 35:16 39:19	36:22 50:14, 15
<b>accumulation</b> 15:8	27:24 28:17 30:17	<b>basically</b> 12:14	<b>bring</b> 18:24
<b>acquisition</b> 38:23	32:16 33:15 35:21	<b>Beach</b> 1:20 6:1	<b>broad</b> 19:24 20:1, 6
<b>active</b> 15:25	37:1 39:23	<b>Beard</b> 1:24 4:5 54:5	<b>broken</b> 35:11
<b>ad</b> 18:21, 22 19:10	<b>Application</b> 1:7	54:23	<b>brought</b> 47:16
19:16 20:12 21:13	<b>Approximately</b> 8:22	<b>Begakis</b> 2:4 3:5 6:8	<b>bucket</b> 15:23
21:14, 16 26:23	8:23	6:18, 19 7:10 9:12	<b>build</b> 41:2
<b>ad-relevant</b> 27:12	<b>April</b> 12:4, 7 29:11	9:18 11:1 12:2	<b>built</b> 22:2
<b>add</b> 27:11	<b>area</b> 21:4	13:21 14:2, 6, 7, 14	<b>business</b> 13:3 15:22
<b>added</b> 10:20 16:2	<b>Arena</b> 10:3	16:7, 13, 15, 18, 23	<b>button</b> 42:1
27:12	<b>Armour</b> 36:10, 18, 19	17:20, 25 18:1	
<b>Addressing</b> 39:7	<b>arrived</b> 11:23	22:7, 10, 12, 24	<b>C</b>
<b>Adidas</b> 10:2	<b>article</b> 18:15, 25	23:1 24:24 25:3	<b>C</b> 4:12 16:7, 8 17:6
<b>AdRoll</b> 20:23, 23	<b>asked</b> 37:11 43:22	27:23 28:1, 19	22:15
21:9, 10	43:25 44:4 50:7	29:19 30:14, 19	<b>California</b> 1:20 2:5
<b>AdRoll's</b> 21:6, 7	<b>aspect</b> 34:17	31:24 32:18 33:17	6:1 7:20 52:13
<b>ads</b> 21:6 27:16, 17	<b>assets</b> 13:7	33:20, 25 34:1	54:2
27:17	<b>assistance</b> 12:14	35:23 36:22, 24	<b>call</b> 23:20 33:11
<b>advertisement</b> 48:10	<b>athlete</b> 15:24 48:19	37:3 39:7, 21 40:1	<b>called</b> 9:22 14:21
48:11, 13, 17 49:10	48:20	40:9, 16, 17 41:15	19:13, 19 20:22
<b>advertisers</b> 22:3	<b>athletes</b> 36:9	41:18, 19 42:25	21:6 23:21 24:5
<b>advertising</b> 20:20	<b>athletic</b> 36:8	43:2, 13, 22, 25	<b>calls</b> 28:13 47:20
21:17, 18 39:2	<b>Athletics</b> 1:4 4:3	44:4, 21, 24 45:21	48:3, 14, 24 49:11
<b>advocates</b> 15:23	6:13 25:13 28:5	47:20 48:3, 14, 24	49:18
<b>aesthetic</b> 13:17	29:1, 14 31:8, 13	49:11, 18, 24 50:7	<b>campaign</b> 47:5, 10
<b>affiliate</b> 15:18	31:22 32:15 33:10	50:15, 17, 20 51:2	<b>cap</b> 15:12
<b>affiliated</b> 46:13	33:12 34:8, 20	<b>behalf</b> 6:13	<b>career</b> 34:10
<b>ago</b> 48:15	35:4, 10 36:19	<b>believe</b> 9:4 15:3	<b>cart</b> 21:4, 5
<b>al</b> 4:3	42:8, 13 44:14	34:11 35:17 48:15	<b>cast</b> 20:1
<b>album</b> 23:23 24:1	45:16 46:14 47:13	<b>best</b> 9:4	<b>casting</b> 20:1
<b>albums</b> 23:24	47:17, 25 48:1, 22	<b>big</b> 8:25, 25 9:13	<b>categories</b> 14:25
<b>algorithm</b> 22:2	48:22 49:1 50:11	10:17 11:21, 21	<b>cell</b> 5:14
24:17 25:21 26:14	<b>Athletics'</b> 4:17	12:21	<b>CEO</b> 6:11
<b>and/or</b> 19:5	49:9, 12, 13	<b>bit</b> 27:9	<b>certain</b> 18:24 27:12
<b>Angeles</b> 2:5	<b>attached</b> 52:7	<b>Black</b> 4:15, 23, 24	<b>Certified</b> 54:5
<b>answer</b> 6:22 9:10	<b>attention</b> 47:16	5:9, 11	<b>certify</b> 52:3 54:6
10:23 11:25 22:8	<b>attorney</b> 6:20	<b>Board</b> 1:2 14:3	54:15
25:21 29:15 37:23	<b>audience</b> 19:24	<b>Board's</b> 13:24	<b>cetera</b> 12:20
37:24 38:15, 15, 16	<b>Audio</b> 8:9, 11, 21, 24	<b>bolt</b> 13:16	<b>chance</b> 41:13
38:18 43:24 44:3	9:1	<b>boost</b> 18:14 26:19	<b>change</b> 24:17 26:9
44:5, 6	<b>Avenue</b> 1:19	26:22 27:1, 2	53:3, 4, 6, 7, 9, 10
<b>answered</b> 43:22, 25	<b>aware</b> 44:16 47:12	<b>boosted</b> 18:20 19:7	53:12, 13, 15, 16, 18
44:5 50:8	<b>awareness</b> 18:16, 24	19:8 20:8 27:16	53:19, 21, 22
<b>answers</b> 40:20		<b>boosting</b> 18:16	<b>changed</b> 25:22
<b>anyway</b> 40:16	<b>B</b>	27:11	<b>channel</b> 10:12
<b>apologize</b> 26:18	<b>B</b> 4:10 13:19, 21	<b>boosts</b> 26:18	<b>channels</b> 10:10
30:14	14:8 22:13, 15, 19	<b>border</b> 34:22 35:7	<b>charge</b> 46:20, 23
<b>apparel</b> 36:9	<b>back</b> 11:19 15:7	<b>bordering</b> 35:11	<b>checked</b> 18:4
<b>APPEAL</b> 1:2	16:18, 24 22:25	<b>bottom</b> 34:15 48:9	<b>chooses</b> 26:16
<b>appear</b> 52:6	23:16 24:15 36:24	<b>boycott</b> 45:17	<b>chunk</b> 15:16
	44:6 50:17	<b>brand</b> 15:23 26:12	<b>circle</b> 34:19 35:3, 6
	<b>background</b> 7:23	26:19, 22 35:18	<b>circular</b> 34:18 35:1



James Wardlow  
October 27, 2015

35:5	<b>consistency</b> 13:6	<b>creative</b> 13:5, 5	<b>differ</b> 34:14
<b>claims</b> 19:2, 3	<b>consists</b> 12:22	47:8, 11	<b>different</b> 11:13
<b>clean</b> 21:20, 25	13:11	<b>creator</b> 19:16 23:23	18:9 23:13, 25
<b>clear</b> 33:1	<b>constant</b> 34:25	<b>CrossFit</b> 20:3, 7, 10	41:20
<b>click</b> 24:14	<b>consultants</b> 11:20	20:15, 15, 16, 18	<b>differently</b> 27:16
<b>clicking</b> 24:11	<b>consumer</b> 10:16	38:2	<b>direct</b> 10:15 11:11
<b>clicks</b> 19:6 20:2	11:11	<b>CSR</b> 1:25 4:5 54:23	24:9 25:8
<b>closer</b> 49:6	<b>contained</b> 52:8	<b>current</b> 7:21 15:24	<b>directing</b> 13:10
<b>Clothing</b> 10:3 49:23	<b>contains</b> 14:21	<b>currently</b> 23:25	19:4 29:8
<b>Coach</b> 38:5	<b>content</b> 14:22, 24	<b>curvature</b> 34:21, 21	<b>direction</b> 54:14
<b>collateral</b> 12:20	18:12, 12, 25 19:6	35:10	<b>directly</b> 9:24 11:16
<b>collection</b> 40:22	22:3 26:10, 11, 11	<b>curve</b> 35:13	12:22 19:16
<b>collects</b> 19:13	26:14, 20 27:5, 7	<b>curved</b> 34:17	<b>director</b> 6:14 7:22
20:24	38:24 45:8 46:21	<b>customer</b> 38:4, 23	8:16 13:2, 8, 9, 10
<b>college</b> 8:5, 7, 8	50:5, 6	51:1	17:9 47:9
<b>Color</b> 4:10, 12, 13, 17	<b>contents</b> 20:2 40:22	<b>customer-facing</b>	<b>discovered</b> 33:22
4:18, 20, 21 5:13	<b>Continue</b> 40:13	22:5 50:6	<b>discovery</b> 39:15
5:14	<b>Continued</b> 5:1	<b>customers</b> 13:6	<b>discussed</b> 24:17
<b>com</b> 11:14	<b>continues</b> 32:15		<b>disparaging</b> 43:17
<b>combination</b> 15:16	<b>conversion</b> 18:23	<b>D</b>	<b>displaying</b> 29:21
<b>combined</b> 46:14 47:6	19:4	<b>D</b> 4:13 22:16, 17	31:9 46:24
<b>come</b> 18:14	<b>coordinator</b> 8:12, 14	23:3	<b>displays</b> 29:22
<b>coming</b> 22:20	8:16	<b>Danny</b> 48:20, 21 49:7	31:10
<b>comment</b> 43:16, 17	<b>copies</b> 40:25	<b>data</b> 19:14, 17 20:24	<b>dispute</b> 47:13
45:10, 11, 14, 19	<b>copy</b> 44:21	21:1, 1, 5 23:22	<b>distinct</b> 35:19 36:4
46:7, 7, 9, 11, 16	<b>corner</b> 29:8 48:9	32:11	<b>distinctive</b> 35:18
<b>comments</b> 43:11, 20	49:16	<b>Dated</b> 52:11 53:25	<b>dividing</b> 35:8
44:8, 10, 11 50:22	<b>correct</b> 7:4 16:25	54:21	<b>document</b> 7:13, 15
<b>commerce</b> 10:18	20:9 33:3 41:9	<b>day</b> 18:4 52:11	13:23 14:5, 9, 13
<b>communication</b> 8:17	42:6, 15, 22, 23	<b>deal</b> 32:6	14:15 16:20 17:15
10:11 13:4 19:16	43:8 49:7 52:9	<b>decision</b> 32:13	23:4 25:6 27:19
<b>communications</b> 13:7	<b>corrected</b> 52:8	<b>DECLARATION</b> 52:1	28:4, 22, 24 29:21
<b>community</b> 23:14	<b>corrections</b> 52:6	<b>deduce</b> 39:1	30:22, 24 32:21, 23
<b>company</b> 9:5, 13, 22	<b>correlates</b> 20:14	<b>defined</b> 21:7 34:16	34:4, 6, 7 36:1, 3, 4
9:23 10:18 11:21	32:1 38:15	34:17, 21 35:1, 2, 7	37:6, 8 39:4, 16, 21
12:15	<b>correlation</b> 32:7, 8	35:9, 10, 13	40:6, 18 45:3, 5
<b>Compare</b> 4:20, 22	32:9, 10, 12, 14	<b>definition</b> 35:5	<b>documents</b> 14:4 39:8
<b>compared</b> 30:12 31:8	33:11	<b>delete</b> 43:18, 19, 20	39:19 40:4, 11, 19
32:24	<b>correlations</b> 32:7	44:8, 10	40:23 41:12
<b>comparing</b> 29:16, 24	<b>cost</b> 15:4 28:15	<b>deleted</b> 44:11	<b>doing</b> 26:3
29:25 30:2	<b>counsel</b> 6:20 22:23	<b>demand</b> 45:9	<b>dollars</b> 9:15 15:9
<b>comparison</b> 28:25	27:23 33:20 40:10	<b>depending</b> 21:2	<b>dot</b> 11:13
<b>competitive</b> 15:24	54:15	<b>deposit</b> 44:25	<b>downward</b> 31:15
<b>complete</b> 18:24 35:3	<b>COUNTY</b> 54:3	<b>deposition</b> 1:13 4:9	<b>drive</b> 18:17 23:9, 16
37:10	<b>couple</b> 23:13	4:16 6:21 7:3, 16	<b>driver</b> 15:14
<b>completed</b> 11:18	<b>course</b> 20:4 34:10	33:24 40:12 51:3	<b>driving</b> 10:14, 15
<b>completion</b> 35:2	<b>court</b> 6:24 7:3, 9	52:5, 6 53:1	16:4
<b>concluded</b> 51:3	13:20 16:9 22:18	<b>DESCRIPTION</b> 4:7 5:2	<b>due</b> 21:20
<b>Conferring</b> 22:23	25:2 27:23, 25	5:7	<b>duly</b> 6:5 54:8
<b>confused</b> 46:13	28:18 30:18 32:17	<b>designer</b> 12:24, 24	
<b>confusingly</b> 34:12	33:16 35:22 37:2	47:7	<b>E</b>
34:13	39:24 44:5, 18	<b>desk</b> 47:8	<b>E</b> 4:15 24:25 25:1
<b>confusion</b> 44:14	45:24 48:6 49:3	<b>desktop</b> 27:14	<b>e-commerce</b> 8:19, 20
<b>connect</b> 34:18	<b>create</b> 15:4 16:2	<b>developers</b> 11:19	9:6, 14, 15 10:6, 8
<b>Connecticut</b> 2:9	18:22 23:17, 24	13:17 15:7	10:10, 19 11:8, 22
<b>consensus</b> 21:22	34:19 35:6, 18	<b>development</b> 15:8	12:10, 11, 13, 25
<b>consisted</b> 8:16	<b>creation</b> 21:16 47:3	<b>Diego</b> 7:20 8:6	13:3, 8, 10, 11, 12

James Wardlow  
October 27, 2015

14:18,21 15:4 17:9 26:5,25 28:7 28:15 34:11 50:5 <b>e-mail</b> 8:18 19:12 19:13 <b>e-mails</b> 19:14 <b>e.g</b> 37:25 38:2,6 <b>easy</b> 17:19 <b>eCom</b> 13:13 <b>edge</b> 35:8,9,10 <b>educational</b> 7:23 <b>effort</b> 12:19 47:6 <b>Eight</b> 38:8 <b>either</b> 9:24 18:22 24:3 <b>embarrassing</b> 8:4 <b>employees</b> 9:2 <b>endeavors</b> 15:17 38:20 <b>entered</b> 41:24 <b>enterprising</b> 13:15 <b>equipment</b> 47:18 48:1 <b>Errata</b> 52:7 53:1 <b>essentially</b> 12:16 19:20 46:14 <b>estimated</b> 30:2 <b>et</b> 4:3 12:20 <b>Event</b> 38:2 <b>events</b> 15:25 16:1 <b>everybody</b> 6:9 <b>evidence</b> 7:12 13:25 22:14,16 23:3 24:25 28:3,21 30:21 32:11,20 33:19 34:3 35:25 40:3 45:1 46:3 49:6 <b>evolved</b> 12:25 21:19 <b>exact</b> 47:14 <b>exactly</b> 29:20 41:10 <b>EXAMINATION</b> 3:1,4 6:17 43:5 50:19 <b>examined</b> 6:6 54:7 <b>example</b> 19:21 <b>examples</b> 39:14 <b>exclamation</b> 45:18 <b>exclusively</b> 17:2,8 <b>excuse</b> 22:14 40:9 <b>exhibit</b> 4:9,10,12 4:13,15,17,18,20 4:21,23,24 5:4,5 5:9,11,13,14 7:8 7:12 13:19,21,22 14:8 16:8,10,25 17:3,5,6,8 22:14 22:16,17,19 23:3	23:6 24:25 25:1 27:24 28:3,17,21 29:8 30:17,21 31:7 32:16,20 33:10,15,19,21,21 34:2,3 35:21,25 37:1,5 39:11,23 40:3 44:17 45:23 46:3 48:5 49:2,5 <b>exhibits</b> 4:1 5:1 13:25 17:21 22:13 22:15 39:11,13 45:22 <b>exit</b> 5:4,6 21:3 37:9,11,16,21 38:25 40:8,21 41:2 <b>experience</b> 26:5,25 28:6 31:18 34:9 35:16 36:8 44:13 <b>expert</b> 28:10,12 <b>explain</b> 29:20 <b>extended</b> 45:9 <b>extensive</b> 26:5,24 28:6 31:17 34:10 35:16 <b>extent</b> 44:24 45:1 <b>extremely</b> 22:4 27:2 27:4	<b>feed</b> 24:6,8 <b>feel</b> 7:2 23:17 <b>field</b> 18:13 20:12 38:11,11,13,14,16 41:3,6,24,25 42:13 <b>figure</b> 38:20 <b>final</b> 38:11 47:10 <b>find</b> 41:21 42:10,18 <b>first</b> 6:5 8:8,23 9:1 15:24 25:8 37:21 39:5 <b>five</b> 38:4 43:1 <b>five-minute</b> 36:22 50:15 <b>Floor</b> 2:4 <b>Flower</b> 2:4 <b>focused</b> 10:15 <b>focuses</b> 26:15 <b>folded</b> 27:14 <b>followers</b> 18:2 23:7 <b>follows</b> 6:6 <b>foregoing</b> 52:4 54:8 <b>form</b> 18:15 27:20 <b>formal</b> 6:23 <b>forth</b> 54:12 <b>found</b> 24:4,21 42:11 <b>foundation</b> 22:9,10 <b>four</b> 4:25 36:4 38:3 <b>free</b> 7:2 <b>freelance</b> 15:6 <b>friend</b> 20:17 38:3 <b>friends</b> 19:12 <b>front</b> 11:19 15:6 27:10 <b>full</b> 30:11 34:19 <b>functionality</b> 13:18 <b>further</b> 42:25 50:13 50:19 51:2 54:15	16:10 17:7,13 21:22 22:8 26:15 27:6,18 33:13 34:23 35:2 39:3 41:11 <b>golf</b> 10:1,2 <b>good</b> 6:19 18:8,12 <b>Google</b> 4:20,22 30:25 31:1,3 32:1 32:3,3,24 33:2 37:25 <b>graduated</b> 8:1 <b>graph</b> 31:9,19 33:5 33:6 <b>graphic</b> 12:24,24 47:7 <b>Great</b> 17:12 <b>group</b> 2:8 6:12 12:19 47:6 <b>grow</b> 10:9 32:15 <b>growing</b> 31:11 <b>grows</b> 18:4 <b>growth</b> 31:10,12
			<b>H</b>
			<b>H</b> 4:20 30:17,21 33:10 47:18 48:1 48:22 49:16 <b>H2O</b> 8:11,24 <b>H2O</b> 8:9,20,25 9:19 9:20 <b>half</b> 34:25 <b>Halfway</b> 46:11 <b>handed</b> 40:2 44:20 <b>handing</b> 7:11 14:8 17:6 23:2 24:24 28:2,20 30:20 32:19 33:18 34:2 35:24 37:4 49:5 <b>happen</b> 8:22 <b>happens</b> 43:18 <b>happy</b> 7:2 <b>hard</b> 34:24 <b>hash</b> 23:23 45:16,17 <b>hate</b> 45:15 <b>Hawaii</b> 7:25 8:2 <b>heard</b> 50:10 <b>hearsay</b> 9:11,17 10:24 12:1 21:24 22:11 27:22 28:13 <b>heavily</b> 38:21 <b>held</b> 9:23 49:9 <b>help</b> 23:9 43:9 <b>helped</b> 12:18 <b>hereto</b> 52:7 <b>hereunto</b> 54:18 <b>high</b> 7:24,25 8:1
	<b>F</b>		
	<b>F</b> 4:17 27:24 28:3 <b>Faber</b> 46:8,12 <b>Facebook</b> 4:12 5:9 5:11,13,15 10:13 15:17 18:3,7,19 18:21,21 19:2 20:20 21:14,17,17 21:20,21,25 22:21 23:15 24:22 25:12 25:24 26:12,16,17 27:1,3,13,14 36:10 38:6 43:7,9 43:12,20 44:9 45:6 46:4,18 48:9 50:21 <b>Facebook's</b> 19:16 24:17 26:9,19 <b>facing</b> 13:6 <b>fact</b> 39:12,13 <b>factor</b> 16:4 <b>factors</b> 38:19 <b>fall</b> 15:23 32:9,9 <b>familiar</b> 46:5,6 47:15 48:11 49:12 <b>far</b> 9:2,3 13:10 36:18 47:3	<b>G</b>	
		<b>G</b> 4:18 28:17,21 <b>Gathering</b> 9:22 10:5 10:17 11:2,3,10 49:23,25 <b>General</b> 37:25 <b>generic</b> 28:14 <b>getting</b> 12:19 <b>given</b> 40:20 <b>gives</b> 26:19 <b>giving</b> 26:22 <b>go</b> 8:5 9:21 11:4 12:5 24:15 32:12 <b>goes</b> 14:12 21:14 32:15 47:10 <b>going</b> 9:10 10:23 11:25 14:11 15:12	

James Wardlow  
October 27, 2015

<p> <b>higher</b> 18:13  <b>highly</b> 15:24  <b>hired</b> 8:15  <b>hits</b> 32:4, 4  <b>hold</b> 15:22  <b>holding</b> 48:21  <b>holistic</b> 13:4 23:17  <b>holistically</b> 10:10  <b>home</b> 14:23  <b>homepage</b> 24:1  <b>honestly</b> 9:5  <b>hosting</b> 24:4  <b>hundred</b> 15:9 37:14  <b>Hurley</b> 36:13, 17, 20  <b>Hybrid</b> 1:4 4:3, 17  6:13 25:13 28:5  29:1, 14 31:8, 13  31:22 32:15 33:10  33:12 34:8, 20  35:4, 10 36:19  42:8, 13 44:14  45:16 46:13 47:12  47:17, 18, 25 48:1  48:22, 22 49:1, 9  49:12, 13 50:11  <b>hybridathletics.com</b>  29:12, 23 30:7, 10  <b>hybridathleticsa...</b>  29:23, 25 30:15  <b>Hylete</b> 1:7 4:3 6:11  6:15, 21 7:22 12:6  12:7, 12, 21 13:5  14:4 15:5, 19  16:25 18:2 19:22  20:9 22:21 23:10  23:18 29:1, 10, 11  31:8, 10, 21 32:15  32:25 33:6 34:8  34:16 35:1, 8  36:18 42:4, 14, 21  43:8, 18 44:8, 15  44:15 45:18 46:13  47:13 48:10 50:10  50:21  <b>Hylete's</b> 4:11, 12, 14  5:4, 6, 9, 11, 15  18:7 23:5, 7, 9  43:12, 16 45:6  46:4, 18 49:10  <b>hylete.com</b> 13:12  14:16, 17 16:2  17:9 19:5 20:20  21:12, 13 24:15  29:22, 24 30:4, 15  37:13 </p>	<p> <b>Ian</b> 25:7  <b>identical</b> 24:12  <b>identification</b> 7:9  13:20 16:9 22:18  25:2 27:25 28:18  30:18 32:17 33:16  35:22 37:2 39:24  44:18 45:24 48:6  49:3  <b>identify</b> 6:9  <b>II</b> 2:12  <b>image</b> 24:14  <b>import</b> 19:15  <b>importance</b> 31:25  38:17  <b>important</b> 26:11, 25  27:2, 4 38:19  <b>impression</b> 19:5  28:7 35:18  <b>include</b> 46:21  <b>includes</b> 15:19  22:21  <b>Incorporated</b> 11:5  <b>increase</b> 20:13  <b>increased</b> 15:2  <b>indentation</b> 49:19  <b>independent</b> 11:12  <b>INDEX</b> 3:1 4:1 5:1  <b>indicate</b> 33:5  <b>indicated</b> 44:13  <b>Indicating</b> 16:12  <b>individual</b> 20:19  26:15, 17  <b>individuals</b> 15:21  19:7, 8  <b>influence</b> 37:22  42:13  <b>influencing</b> 42:5, 6  42:21  <b>information</b> 17:14  17:23 22:22 29:2  33:3 42:7  <b>infringement</b> 45:16  <b>Initially</b> 8:15  <b>input</b> 31:4 33:2  41:6, 7 42:12  <b>inputted</b> 42:1, 20  <b>inside</b> 17:10 19:10  <b>Instagram</b> 4:14  10:13 15:18 23:5  23:7, 9, 14, 16 24:1  24:2, 2, 6, 8, 9, 10  24:13, 16, 19, 22  43:21 44:11  <b>instance</b> 47:15  <b>instructing</b> 44:2  <b>Intellectual</b> 2:3 </p>	<p> 6:20  <b>interact</b> 21:4  <b>interacting</b> 11:12  <b>interest</b> 19:20 20:4  20:4, 5, 5, 6, 7, 10  20:11, 12, 15, 18  21:2  <b>interested</b> 20:15  54:17  <b>interesting</b> 33:8  <b>Interests</b> 19:19  <b>interior</b> 34:23  <b>internal</b> 11:17  <b>internally</b> 43:10  <b>interrogatory</b> 17:16  39:9, 10, 16, 17  <b>introduced</b> 13:25  17:6 45:22  <b>introducing</b> 22:14  22:16 45:1  <b>invasive</b> 20:25  <b>invested</b> 38:21  <b>IP</b> 2:8 6:12  <b>Irregardless</b> 39:12  <b>irrelevant</b> 33:14  39:4, 19 49:24  <b>irrespective</b> 39:13 </p> <hr/> <p style="text-align: center;"><b>J</b></p> <hr/> <p> <b>J</b> 2:8 4:23 33:15, 19  34:2, 3  <b>Jaco</b> 10:3 49:22  50:1, 3, 6  <b>James</b> 1:13 3:3 4:2  6:4, 14 52:3, 19  53:25  <b>Jenn</b> 12:18  <b>Jentgen</b> 25:7  <b>Jentgen's</b> 4:15  27:21  <b>job</b> 7:21 8:8  <b>John</b> 2:4 6:19  <b>john@tsircoulaw.com</b>  2:6  <b>joint</b> 21:8  <b>judge</b> 6:23  <b>July</b> 44:20 45:6  46:3 </p> <hr/> <p style="text-align: center;"><b>K</b></p> <hr/> <p> <b>K</b> 4:24 35:21, 25  <b>Karla</b> 1:24 4:5 54:5  54:23  <b>keep</b> 17:18, 19, 23, 24  <b>Kekaulike</b> 8:1  <b>key</b> 15:14  <b>keyword</b> 19:21, 23 </p>	<p> 31:5, 10, 13, 21  32:2 33:7, 8  <b>keywords</b> 19:20, 23  19:25 20:3 31:4, 7  32:5, 14, 25 33:2  33:12  <b>killling</b> 26:10  <b>kind</b> 8:18 12:19  26:4  <b>kinds</b> 18:9  <b>King</b> 8:1  <b>know</b> 16:21 17:10  19:24 24:20 29:17  30:10 32:7 37:12  37:15 48:25 49:13  49:19  <b>knowledge</b> 8:25 17:3  17:4, 8, 10 23:6  39:2 48:4  <b>Kosma</b> 2:8 3:5 6:12  6:12 9:10, 16  10:23 11:25 13:22  14:3, 11 16:10, 19  17:13, 22 21:24  22:8, 11, 19 27:18  28:12 29:15 30:9  31:20 33:13, 23  35:20 39:3, 15  40:15 41:11, 17  43:1, 6, 15, 23 44:2  44:7, 19, 22 45:4  46:1 47:22, 24  48:7, 16 49:4, 15  49:21 50:2, 9, 13 </p> <hr/> <p style="text-align: center;"><b>L</b></p> <hr/> <p> <b>L</b> 1:24 4:5 5:4 37:1  37:5 54:5, 23  <b>Lacks</b> 22:9, 10  <b>laid</b> 36:5  <b>land</b> 20:25  <b>large</b> 19:24  <b>largest</b> 20:1  <b>Law</b> 2:3 6:20  <b>leading</b> 43:13 47:20  47:22  <b>leads</b> 18:17  <b>league</b> 15:20, 21  <b>leave</b> 9:19 11:2  12:3  <b>leaving</b> 11:24  <b>left</b> 9:13, 20 10:21  11:3 12:4, 5 21:3  36:19  <b>legal</b> 6:23  <b>Let's</b> 16:15 50:14  <b>level</b> 16:1 </p>
--	--	---	--

James Wardlow  
October 27, 2015

<b>license</b> 10:2 15:1 <b>licensed</b> 9:24 <b>licensing</b> 13:15 <b>likelihood</b> 20:13 <b>likes</b> 20:17 23:14 <b>liking</b> 20:14, 14, 16 <b>line</b> 14:12 25:8, 9, 9 27:18 30:12 33:14 35:11, 11 39:3, 18 41:12 53:2, 5, 8, 11 53:14, 17, 20 <b>link</b> 24:11 <b>list</b> 19:14 <b>lists</b> 19:15 <b>little</b> 22:5 27:9 31:11 <b>live</b> 7:19, 20 <b>LLC</b> 1:4 4:3 <b>logged</b> 25:24 <b>logo</b> 34:8, 8, 16, 20 34:23 35:1, 3, 4, 9 35:11, 12 36:11, 13 36:18, 18, 19 45:17 46:14 <b>logos</b> 4:23, 25 34:11 34:14 35:17 36:4 36:6, 15, 17 <b>long</b> 25:14 47:12 49:22 <b>look</b> 12:12 34:11, 13 41:13 45:10 <b>looking</b> 28:8 46:10 <b>looks</b> 28:14, 14, 15 45:15, 17 46:6 <b>Looptworks</b> 10:3 <b>Los</b> 2:5 <b>lot</b> 15:6 21:19 32:6 32:7 38:19 <b>love</b> 23:18 <b>low</b> 28:15	<b>manage</b> 11:15 <b>management</b> 14:22, 24 <b>manager</b> 8:20 10:6 11:8 12:10, 23 13:1 18:21, 22 19:10 <b>manager's</b> 20:12 <b>managers</b> 11:17 <b>manner</b> 31:22 <b>manufacturer</b> 11:6 <b>marked</b> 4:7 5:2, 7 7:8, 11 13:19 14:8 16:8 22:17 23:3 24:24 25:1 27:24 28:2, 17, 21 30:17 30:21 32:16, 20 33:15, 19 34:2 35:21, 25 37:1, 5 38:11 39:23 40:3 44:17 45:23 46:2 48:5 49:2, 5 <b>marketing</b> 6:14 7:22 8:9, 12, 13, 15, 17 10:11 12:22, 23 13:2, 4, 6, 9 17:9 21:6 26:6, 25 28:7 31:18, 18 34:10 35:17 38:20 46:20 46:21, 24 47:4, 9 47:10, 18 48:2 50:5, 6 <b>materials</b> 46:24 47:19 48:2 <b>matter</b> 22:13, 15 <b>Maui</b> 7:25 <b>mean</b> 10:19 18:8 39:17 43:14 <b>meaning</b> 13:16 42:12 42:20 <b>means</b> 13:14 22:3 <b>meant</b> 30:14 <b>mechanism</b> 24:5 <b>media</b> 8:18 10:12 11:11, 20 12:18 15:17 16:4 26:6 31:18 36:9 38:6, 8 44:15 <b>members</b> 26:2 <b>memory</b> 9:4 <b>mentioned</b> 14:17, 20 24:3 36:18 <b>mentions</b> 41:21 <b>messaging</b> 47:11 <b>Method</b> 38:9 <b>Michael</b> 2:8 6:12 <b>middle</b> 35:9 40:11 <b>million</b> 9:15 10:22	11:23, 24 15:12 <b>minutes</b> 43:1 <b>mistakes</b> 7:5 <b>mkosma@whipgroup...</b> 2:10 <b>mobile</b> 27:15 <b>modified</b> 27:19 <b>mold</b> 48:22 <b>money</b> 26:13, 22 <b>monitor</b> 50:22 <b>monitoring</b> 43:11 <b>monthly</b> 30:2 <b>months</b> 8:23 <b>morning</b> 6:19 <b>move</b> 35:4 <b>Moving</b> 34:25 <b>mud</b> 20:4	<b>O</b> 5:11 45:23 46:3 <b>object</b> 9:10, 16 10:23 11:25 13:22 14:11 16:10, 21 17:13 22:8 27:21 29:15 33:13 34:18 34:25 35:20 39:3 39:21 41:11 45:2 <b>objected</b> 17:7 <b>objecting</b> 30:12 44:4 <b>objection</b> 14:6 16:19 17:19, 20, 24 21:24 27:18 28:12 30:9 31:20 33:21 33:23 39:7, 17 41:15, 16, 18 43:13 43:22, 25 44:25 45:2, 21 47:20 48:3, 14, 24 49:11 49:18, 24 50:7 <b>objects</b> 34:24 <b>obligations</b> 6:24 <b>obstacle</b> 20:4 <b>obviously</b> 10:9 <b>October</b> 1:15 4:4 6:2 52:5 <b>offer</b> 18:15, 22 19:1 19:2 <b>OFFICE</b> 1:1 <b>Oh</b> 44:23 <b>Okay</b> 8:5 14:6, 15, 15 16:24 17:12 22:12 33:25 41:17 43:2 <b>olympic</b> 20:5 <b>online</b> 8:9, 12, 13, 15 8:17 9:6, 7 11:13 13:5 26:25 28:6 31:18 37:9 40:24 41:1 <b>oomph</b> 27:9 <b>open</b> 13:13, 16 33:4 38:11, 13, 14 <b>opinion</b> 26:6, 8, 24 28:10, 10 31:17 <b>opportunity</b> 7:4 26:20, 22 <b>Opposer</b> 1:5 2:7 <b>Opposer's</b> 5:8 44:17 45:23 48:5 49:2 <b>Opposing</b> 40:10 <b>Opposition</b> 1:6 <b>options</b> 37:21, 23, 24 <b>ORANGE</b> 54:3 <b>order</b> 13:24 14:3 16:22 17:17 39:8 39:15
<hr/> <b>M</b>		<hr/> <b>N</b>	
<b>M</b> 5:5 39:23 40:3 <b>Mad</b> 38:9 <b>Magazine</b> 38:1, 9 39:1 41:7 <b>Magazines</b> 38:21 <b>Magento</b> 13:13, 15 14:20 15:1 <b>Magento's</b> 14:23 <b>MailChimp</b> 19:13 <b>main</b> 10:1, 14 <b>maintaining</b> 13:11 <b>maintenance</b> 50:4 <b>major</b> 11:18 38:23 <b>making</b> 10:11 32:13 38:24	<b>marked</b> 4:7 5:2, 7 7:8, 11 13:19 14:8 16:8 22:17 23:3 24:24 25:1 27:24 28:2, 17, 21 30:17 30:21 32:16, 20 33:15, 19 34:2 35:21, 25 37:1, 5 38:11 39:23 40:3 44:17 45:23 46:2 48:5 49:2, 5 <b>marketing</b> 6:14 7:22 8:9, 12, 13, 15, 17 10:11 12:22, 23 13:2, 4, 6, 9 17:9 21:6 26:6, 25 28:7 31:18, 18 34:10 35:17 38:20 46:20 46:21, 24 47:4, 9 47:10, 18 48:2 50:5, 6 <b>materials</b> 46:24 47:19 48:2 <b>matter</b> 22:13, 15 <b>Maui</b> 7:25 <b>mean</b> 10:19 18:8 39:17 43:14 <b>meaning</b> 13:16 42:12 42:20 <b>means</b> 13:14 22:3 <b>meant</b> 30:14 <b>mechanism</b> 24:5 <b>media</b> 8:18 10:12 11:11, 20 12:18 15:17 16:4 26:6 31:18 36:9 38:6, 8 44:15 <b>members</b> 26:2 <b>memory</b> 9:4 <b>mentioned</b> 14:17, 20 24:3 36:18 <b>mentions</b> 41:21 <b>messaging</b> 47:11 <b>Method</b> 38:9 <b>Michael</b> 2:8 6:12 <b>middle</b> 35:9 40:11 <b>million</b> 9:15 10:22	11:23, 24 15:12 <b>minutes</b> 43:1 <b>mistakes</b> 7:5 <b>mkosma@whipgroup...</b> 2:10 <b>mobile</b> 27:15 <b>modified</b> 27:19 <b>mold</b> 48:22 <b>money</b> 26:13, 22 <b>monitor</b> 50:22 <b>monitoring</b> 43:11 <b>monthly</b> 30:2 <b>months</b> 8:23 <b>morning</b> 6:19 <b>move</b> 35:4 <b>Moving</b> 34:25 <b>mud</b> 20:4	<b>O</b> 5:11 45:23 46:3 <b>object</b> 9:10, 16 10:23 11:25 13:22 14:11 16:10, 21 17:13 22:8 27:21 29:15 33:13 34:18 34:25 35:20 39:3 39:21 41:11 45:2 <b>objected</b> 17:7 <b>objecting</b> 30:12 44:4 <b>objection</b> 14:6 16:19 17:19, 20, 24 21:24 27:18 28:12 30:9 31:20 33:21 33:23 39:7, 17 41:15, 16, 18 43:13 43:22, 25 44:25 45:2, 21 47:20 48:3, 14, 24 49:11 49:18, 24 50:7 <b>objects</b> 34:24 <b>obligations</b> 6:24 <b>obstacle</b> 20:4 <b>obviously</b> 10:9 <b>October</b> 1:15 4:4 6:2 52:5 <b>offer</b> 18:15, 22 19:1 19:2 <b>OFFICE</b> 1:1 <b>Oh</b> 44:23 <b>Okay</b> 8:5 14:6, 15, 15 16:24 17:12 22:12 33:25 41:17 43:2 <b>olympic</b> 20:5 <b>online</b> 8:9, 12, 13, 15 8:17 9:6, 7 11:13 13:5 26:25 28:6 31:18 37:9 40:24 41:1 <b>oomph</b> 27:9 <b>open</b> 13:13, 16 33:4 38:11, 13, 14 <b>opinion</b> 26:6, 8, 24 28:10, 10 31:17 <b>opportunity</b> 7:4 26:20, 22 <b>Opposer</b> 1:5 2:7 <b>Opposer's</b> 5:8 44:17 45:23 48:5 49:2 <b>Opposing</b> 40:10 <b>Opposition</b> 1:6 <b>options</b> 37:21, 23, 24 <b>ORANGE</b> 54:3 <b>order</b> 13:24 14:3 16:22 17:17 39:8 39:15
		<hr/> <b>O</b>	

**James Wardlow**  
**October 27, 2015**

<b>organic</b> 18:9,13,18 23:14 25:22 26:10 26:11 27:16,17,17 <b>original</b> 27:20 <b>Orlando</b> 32:25 33:7 33:8,12 42:16,20 <b>outcome</b> 54:17 <b>outlining</b> 34:22,23 <b>outside</b> 18:19 <b>overall</b> 8:16 <b>Overview</b> 4:19 <b>owners</b> 11:13 <b>ownership</b> 15:22	<b>person</b> 11:16 36:10 <b>person's</b> 46:11 <b>personally</b> 50:24 <b>personnel</b> 15:25 <b>phone</b> 5:14 <b>photocopy</b> 4:10,12 4:13,15,17,18,20 4:21,23,24 5:4,5 5:9,11,13,14 <b>photographer</b> 12:23 47:7 <b>photos</b> 24:2,2 <b>physical</b> 40:25 <b>picked</b> 12:16 <b>picture</b> 40:14 48:8 49:6,7 <b>pictures</b> 46:23 47:2 47:3,4 <b>piece</b> 26:11 47:17 47:25 <b>pixel</b> 20:23,24 <b>place</b> 21:9 43:18 54:12 <b>platform</b> 13:12,13 13:14 14:17,18,21 15:5,10 23:18 <b>platforms</b> 10:13 11:12 23:15,25 <b>play</b> 16:4 <b>please</b> 7:2 46:9 <b>point</b> 22:19 34:16 35:2 45:18 <b>points</b> 32:11 34:22 35:5,11 <b>popular</b> 45:9 <b>portion</b> 8:19 9:6 13:3 21:3 27:21 35:12 <b>position</b> 10:7 11:9 11:15 <b>positive</b> 32:7 33:11 <b>possible</b> 20:2 <b>possibly</b> 18:15 <b>post</b> 18:14 20:2 24:3 26:22 27:11 27:15 45:6,7,8 46:3,5 <b>posted</b> 25:25 37:10 <b>posting</b> 19:1 <b>posts</b> 18:7,9,9,10 18:17,20 19:7,8 20:8 26:3,17 27:1 27:2,17 38:8 50:22,23 <b>potential</b> 20:11 <b>power</b> 27:7,7,8 <b>practically</b> 34:18	<b>presence</b> 11:14 <b>present</b> 2:11 6:23 22:1 24:13 27:15 <b>presented</b> 17:3 24:12 <b>presents</b> 21:5 34:7 <b>previously</b> 16:21 17:15,22 24:17 <b>primarily</b> 25:13 <b>print</b> 13:5 <b>printout</b> 37:9 40:20 <b>printouts</b> 5:5 40:7 <b>prior</b> 50:10 54:7 <b>probably</b> 9:6 <b>proceeding</b> 6:23 <b>proceedings</b> 54:8,11 54:16 <b>process</b> 43:11,14,17 44:10 <b>produced</b> 13:23 14:1 14:5 16:11,20,22 39:5,9,12,20 40:11 41:13 <b>product</b> 14:24 24:13 41:8 49:13 <b>product-centric</b> 27:8 <b>products</b> 42:14,21 <b>profile</b> 24:11 <b>program</b> 15:19 <b>projected</b> 31:12 <b>projecting</b> 31:15 <b>promise</b> 24:10 <b>promotion</b> 18:15 27:8 38:6 <b>promotional</b> 16:3 <b>prompted</b> 16:1 <b>Property</b> 2:3 6:20 <b>proposed</b> 39:10 <b>provide</b> 19:17 29:2 <b>provider</b> 19:13 <b>provides</b> 38:18 <b>public</b> 22:13,15 29:3 31:1 33:4 <b>publish</b> 39:14 <b>Pukalani</b> 8:1 <b>pull</b> 29:6 <b>pulls</b> 23:22 24:1 <b>purchase</b> 37:10,22 42:5,6,14,21 <b>purchased</b> 41:8 42:4 <b>purchaser</b> 38:18 <b>purchasers</b> 37:12,15 <b>purchasing</b> 38:25 <b>put</b> 22:12,24 26:21 27:5,18 31:5 47:4 <b>putting</b> 32:2	<hr/> <b>Q</b> <hr/> <b>query</b> 37:25 <b>question</b> 18:8 25:20 38:17 42:1 43:24 44:3 47:23 50:7 <b>question-and-answer</b> 37:20 <b>questioning</b> 33:14 39:18 41:12 <b>questionnaire</b> 40:7 <b>questions</b> 6:22 7:1 17:7 39:9,10 42:25 50:13 51:2 <b>quick</b> 16:15 <hr/> <b>R</b> <hr/> <b>racing</b> 20:4 <b>ran</b> 9:24 <b>reach</b> 18:10,11,13 25:23,24 26:13 <b>reached</b> 18:7 <b>reaching</b> 25:16,18 26:2 <b>read</b> 7:4 25:9 37:20 44:6 46:9 52:4 <b>Reading</b> 25:11 <b>ReadyPulse</b> 23:21,22 <b>real</b> 8:8 16:15 <b>really</b> 18:16 26:14 <b>reason</b> 17:16 32:9 41:8 42:4,5,21 53:4,7,10,13,16 53:19,22 <b>receive</b> 20:8 <b>received</b> 15:11 29:10,13 <b>receives</b> 19:6 <b>Recess</b> 16:17 36:23 43:3 50:16 <b>recognize</b> 7:13 14:9 23:4 25:4 28:4,22 30:22 32:21 34:4 36:1 37:6 40:4 <b>record</b> 8:3 14:11 16:16,18,20 22:12 22:13,15,24 29:20 30:14 33:1 36:15 36:24 39:8,14 40:9,16 50:17 <b>referencing</b> 32:3,4 <b>Referral</b> 38:3 <b>referring</b> 16:25 <b>refers</b> 31:7 <b>regarding</b> 24:18 <b>regards</b> 17:5 39:8 45:2,21 50:21
--	--	---	--

James Wardlow  
October 27, 2015

<p><b>related</b> 26:9 32:12 39:9,11 54:16</p> <p><b>relates</b> 25:14</p> <p><b>released</b> 24:22</p> <p><b>relevant</b> 18:12 22:1 22:2,4 24:4 26:10 26:14,15,21 27:6</p> <p><b>relying</b> 23:6</p> <p><b>remember</b> 45:19 47:14</p> <p><b>repeat</b> 47:23</p> <p><b>rephrase</b> 7:2</p> <p><b>replies</b> 50:22</p> <p><b>REPORTED</b> 1:23</p> <p><b>reporter</b> 7:9 13:20 16:9,16 22:18 25:2 27:23,25 28:18 30:18 32:17 33:16 35:22 37:2 39:24 44:6,18,23 45:24 48:6 49:3 54:6</p> <p><b>reporting</b> 41:4</p> <p><b>request</b> 17:15,16 39:15,16,16,17</p> <p><b>requested</b> 17:15,23</p> <p><b>research</b> 24:21</p> <p><b>resource</b> 20:22 23:21</p> <p><b>resources</b> 11:17</p> <p><b>responder</b> 15:24</p> <p><b>responsible</b> 13:4 47:1</p> <p><b>results</b> 41:21 42:11 42:12,19</p> <p><b>retailers</b> 11:13</p> <p><b>retargeting</b> 21:6</p> <p><b>return</b> 38:4</p> <p><b>revenue</b> 9:2,3,4,7 9:14 10:18,19 11:22</p> <p><b>review</b> 41:1 42:7</p> <p><b>reviewed</b> 40:22,24</p> <p><b>right</b> 6:8 23:2 27:10,10 29:5,8 31:3 37:21</p> <p><b>right-hand</b> 48:9 49:16</p> <p><b>Rob</b> 32:25 33:7,8,12 41:22,23 42:1,16 42:20 46:8,12</p> <p><b>role</b> 8:13 10:7,9,11 11:9 12:25 13:8,9</p> <p><b>Ron</b> 2:12 6:11</p> <p><b>room</b> 6:9</p> <p><b>roughly</b> 37:12,15,18</p> <p><b>row</b> 36:5</p>	<p><b>run</b> 14:18,23 20:5 43:7,9 48:13</p> <p><b>running</b> 8:19 11:11</p> <hr/> <p style="text-align: center;"><b>S</b></p> <hr/> <p><b>sales</b> 10:9,15</p> <p><b>San</b> 7:20 8:6</p> <p><b>sanction</b> 14:3 16:22</p> <p><b>sanctions</b> 13:24 17:17</p> <p><b>saying</b> 30:4</p> <p><b>says</b> 14:4</p> <p><b>Schmidt</b> 45:11</p> <p><b>school</b> 7:24,25 8:1</p> <p><b>screenshot</b> 4:10,12 4:13,17,18,20,21 5:9,11,13,15 14:16,23 28:8 30:25 32:24</p> <p><b>screenshots</b> 40:10</p> <p><b>se</b> 32:4</p> <p><b>search</b> 37:25,25 41:3,6 42:8,16</p> <p><b>searches</b> 32:1</p> <p><b>searching</b> 41:20</p> <p><b>section</b> 45:10 46:7 46:11</p> <p><b>sections</b> 27:13</p> <p><b>see</b> 14:22 20:8,12 20:19 21:13 24:10 26:1 30:11 31:4,5 35:13 38:14 41:7 45:12 48:25 49:9 49:16,19</p> <p><b>seeing</b> 20:13 45:19</p> <p><b>seen</b> 26:20 36:6,9 39:6 45:7,8 46:16</p> <p><b>segment</b> 19:15 41:4</p> <p><b>segments</b> 19:14</p> <p><b>select</b> 39:1</p> <p><b>selecting</b> 20:11</p> <p><b>send</b> 19:16</p> <p><b>sends</b> 19:14</p> <p><b>separate</b> 34:24</p> <p><b>September</b> 29:11</p> <p><b>Serial</b> 1:7</p> <p><b>service</b> 15:20,21,25 19:12 20:22 23:22 51:1</p> <p><b>set</b> 54:12</p> <p><b>Seven</b> 38:6</p> <p><b>share</b> 23:24</p> <p><b>SHEET</b> 53:1</p> <p><b>shift</b> 8:20,22</p> <p><b>shop</b> 11:13 24:6,7 24:11</p> <p><b>shopping</b> 21:4,4</p>	<p><b>shortened</b> 46:14</p> <p><b>shorthand</b> 54:5,13</p> <p><b>show</b> 22:2 26:17,23 27:16 30:11 40:10 40:16</p> <p><b>showcased</b> 24:14</p> <p><b>showed</b> 16:24</p> <p><b>shown</b> 21:14 26:16 29:18</p> <p><b>side</b> 27:13 35:8</p> <p><b>sides</b> 35:13</p> <p><b>sign</b> 16:2 47:7</p> <p><b>signed</b> 48:17 52:7</p> <p><b>similar</b> 11:10 34:12 34:13,21 45:17</p> <p><b>similarities</b> 35:14</p> <p><b>SimilarWeb</b> 4:19</p> <p><b>SimilarWeb.com</b> 29:1 29:2,5,9</p> <p><b>simply</b> 15:23 18:24 21:1 31:23</p> <p><b>site</b> 14:19 15:15</p> <p><b>six</b> 8:23 38:5</p> <p><b>Size</b> 9:2</p> <p><b>Skins</b> 10:2</p> <p><b>slack</b> 12:15</p> <p><b>slash</b> 12:23 38:3,5 38:9</p> <p><b>small</b> 12:16</p> <p><b>smaller</b> 10:4</p> <p><b>so-called</b> 26:14</p> <p><b>social</b> 8:18 10:12 11:11,19 12:18 15:17 16:4 26:6 31:18 36:9 38:6,8 44:15</p> <p><b>software</b> 20:22 23:22 41:2</p> <p><b>Solana</b> 1:20 6:1</p> <p><b>somebody</b> 18:10</p> <p><b>sorry</b> 27:17 44:23</p> <p><b>sort</b> 35:7</p> <p><b>sorts</b> 9:23</p> <p><b>sotto</b> 22:23</p> <p><b>sound</b> 10:12</p> <p><b>source</b> 13:13,16</p> <p><b>South</b> 2:4</p> <p><b>space</b> 21:11 22:4</p> <p><b>speak</b> 9:5</p> <p><b>specific</b> 9:23 18:23 19:25 23:23 32:2 32:5,11 41:25 47:4</p> <p><b>specifically</b> 20:16</p> <p><b>specify</b> 18:23</p> <p><b>speculation</b> 9:11,16 10:24 12:1 21:24</p>	<p>22:9 27:22 28:13 31:20 35:20 47:21 48:3,14,24 49:11 49:18</p> <p><b>spell</b> 8:3</p> <p><b>sponsor</b> 20:8</p> <p><b>sponsored</b> 48:20</p> <p><b>stack</b> 40:4,6,18</p> <p><b>Stamford</b> 2:9</p> <p><b>standing</b> 17:18,20 17:23 33:20,23 39:17 41:16,18 45:22</p> <p><b>start</b> 6:8</p> <p><b>started</b> 8:10,12 9:1 9:8,9 10:17 12:7 12:9,11 31:14</p> <p><b>starting</b> 7:24 8:17 31:11 34:15 35:12</p> <p><b>State</b> 8:6 54:2</p> <p><b>stated</b> 43:7</p> <p><b>statement</b> 26:7</p> <p><b>STATES</b> 1:1</p> <p><b>STEP</b> 16:24</p> <p><b>Stevens</b> 1:19</p> <p><b>stone</b> 48:22 49:9,14 49:17</p> <p><b>stopped</b> 25:12,15</p> <p><b>Storm</b> 9:22 10:5,17 11:2,3,10 49:23 49:25</p> <p><b>straight</b> 35:9,13</p> <p><b>strategic</b> 15:19 38:22 41:23</p> <p><b>strategy</b> 12:19 50:5</p> <p><b>Street</b> 2:4,9</p> <p><b>Strike</b> 22:25</p> <p><b>strong</b> 15:18</p> <p><b>subscribed</b> 54:18</p> <p><b>subsequent</b> 14:24</p> <p><b>suggested</b> 27:15</p> <p><b>Summer</b> 2:9</p> <p><b>supervision</b> 54:14</p> <p><b>sure</b> 10:11,20 16:15 16:19 17:25 38:24</p> <p><b>survey</b> 5:4,6 37:9 37:11,16,21 38:25 40:8,21</p> <p><b>surveys</b> 41:3</p> <p><b>survive</b> 26:12</p> <p><b>sworn</b> 6:5 54:8</p> <p><b>system</b> 14:22,24 17:10 41:4</p> <hr/> <p style="text-align: center;"><b>T</b></p> <hr/> <p><b>tag</b> 45:16,17</p> <p><b>tagged</b> 24:3</p>
--	---	---	--

James Wardlow  
October 27, 2015

<b>tags</b> 23:23 <b>tailed</b> 8:18 <b>take</b> 16:14 22:25 36:22 37:11 43:1 50:14 <b>taken</b> 16:17 36:23 37:16 43:3 50:16 52:5 54:11,12 <b>takes</b> 21:5 <b>Talk</b> 38:1,21 39:1 41:7,8 <b>tangible</b> 16:1 <b>target</b> 18:20 19:7,8 19:10,19 <b>targeted</b> 18:18 21:15 <b>task</b> 19:4 <b>tasks</b> 18:23 <b>TaylorMade</b> 10:1 <b>team</b> 12:11,14,17,21 12:22 15:20 <b>tell</b> 6:25 10:21 18:6 31:19 34:24 <b>telling</b> 32:6 <b>tells</b> 31:21 32:13 33:6 <b>template</b> 28:15,16 <b>terms</b> 9:14 10:18 11:22 44:25 <b>testified</b> 6:6 <b>testify</b> 29:17 54:9 <b>testifying</b> 6:24 41:14 <b>testimony</b> 14:12 17:2,13,22 25:7 27:19 30:13 39:4 52:8 <b>Thank</b> 35:15 36:21 42:24 51:2 <b>thereof</b> 54:17 <b>thick</b> 34:22 35:7 <b>things</b> 10:14 15:16 21:22 22:1 24:16 <b>think</b> 34:13 <b>third</b> 11:18 23:20 <b>third-party</b> 13:17 20:22 23:21 <b>thought</b> 20:6 <b>thousand</b> 15:9 37:14 <b>Three</b> 38:2 <b>throwing</b> 26:12 <b>time</b> 10:14 18:4 25:14,25 27:10 30:5,8 39:5 50:1 54:12 <b>timeline</b> 18:10 21:20 26:21,23	<b>timelines</b> 21:23 <b>tips</b> 34:19 <b>title</b> 8:10,20,22 10:5 11:7 12:9 <b>today</b> 7:17 12:21 17:2 39:12 <b>today's</b> 37:22 <b>Tony</b> 45:11 <b>tool</b> 19:18 23:20 <b>top</b> 34:15,25 35:3,6 49:16 <b>tracking</b> 20:24 <b>tracks</b> 21:1 <b>trademark</b> 1:1,2 45:16 47:13 <b>traffic</b> 4:19 18:18 23:16 28:25 32:4 <b>train/compete</b> 15:20 15:21 <b>trainer</b> 15:25 38:5 <b>transcribed</b> 54:13 <b>transcript</b> 4:16 27:21 52:4 <b>travel</b> 21:11 <b>travels</b> 21:12,12 <b>trending</b> 31:4,6,22 31:23 33:7,7,8,10 <b>Trends</b> 30:25 31:1,3 32:3,24 33:2 <b>Trends'</b> 4:20,22 <b>Trial</b> 1:2 4:9 7:16 <b>triangle</b> 35:6 <b>true</b> 24:23 52:8 <b>truth</b> 6:25,25 7:1 54:9,9,10 <b>truthfully</b> 6:22 <b>trying</b> 20:1 21:20 21:25 23:17 38:20 <b>Tsircou</b> 2:3 6:20 <b>TTAB</b> 14:3 16:22 17:17 <b>TTAB's</b> 39:8,15 <b>Tuesday</b> 4:4 6:2 52:5 <b>turn</b> 31:15 <b>Twitter</b> 10:13 15:18 23:16 38:7 <b>two</b> 4:23 32:11,14 33:2,11 34:24 35:5,17 36:15,17 38:1 44:22 48:15 <b>two-fold</b> 26:8 <b>type</b> 38:16 <b>types</b> 47:1 <b>typewriting</b> 54:14 <b>typically</b> 18:14 27:13 32:8	<hr/> <p style="text-align: center;"><b>U</b></p> <hr/> <b>U.S</b> 10:2 <b>umbrella</b> 9:23 <b>unclear</b> 49:20 <b>understand</b> 7:1,6 <b>Understood</b> 22:7 <b>UNITED</b> 1:1 <b>universal</b> 41:3,6 <b>University</b> 8:6 <b>upward</b> 31:22 <b>use</b> 14:4 19:12,22 19:23 20:3,21 38:15,23,25 <b>user</b> 18:23 19:19 20:25 21:12 22:20 23:18 24:6,9 27:6 27:10 <b>user's</b> 26:21,23 <b>user-facing</b> 22:5 <b>users</b> 16:1 18:19 19:4,10,11,17 23:9 24:2 32:2 37:10 38:14,24 <b>uses</b> 14:18	30:20 32:19 33:18 35:15,24 36:21 37:4 40:2,9,18 41:20 43:7 44:20 45:5 46:2,20 48:8 49:22 50:21 52:3 52:19 53:25 <b>warrant</b> 20:2 <b>wasn't</b> 26:10 40:15 <b>watches</b> 11:6 <b>way</b> 20:19 21:18 23:12 54:17 <b>ways</b> 23:13 <b>we're</b> 26:2,3 <b>we've</b> 15:6 <b>wearing</b> 36:10 <b>web</b> 21:8,9 28:8,8 28:25 43:16 <b>website</b> 4:11,17 11:19 13:18 15:10 15:11 16:5,25 20:24,25 21:2,8 21:10,10,13 23:10 23:25 29:16,18 30:11 38:10 41:21 50:4 <b>week</b> 18:6 <b>weeks</b> 48:15 <b>weightlifting</b> 20:5 <b>went</b> 7:25 8:6 9:22 11:5 12:6 29:5 31:3 <b>whereof</b> 54:18 <b>white</b> 4:15,23,24 5:9,11 <b>Whitmyer</b> 2:8 6:12 <b>Wilson</b> 2:12 6:11,11 16:12,14 22:23 50:14 <b>witness</b> 3:3 6:10,14 21:25 28:12,14 31:21 43:13,14 44:2 47:20,22,23 48:4,15,25 49:12 49:19,25 54:7,18 <b>WOD</b> 38:1,21 39:1 41:7,8 <b>Wolf</b> 41:22,23 <b>Wolf's</b> 42:1 <b>work</b> 8:7 13:16 24:7 49:22 <b>worked</b> 8:8 11:17 15:6 21:9 50:1 <b>working</b> 13:12 34:9 35:16 36:8 38:21 39:2 50:10 <b>world</b> 38:22
		<hr/> <p style="text-align: center;"><b>V</b></p> <hr/> <b>valid</b> 44:25 45:2 <b>value</b> 16:3 <b>various</b> 31:4 <b>vendors</b> 11:18 <b>ventures</b> 21:8 <b>versus</b> 29:22,24 30:7,15 <b>view</b> 34:14 <b>viewers</b> 16:5 <b>viewing</b> 15:14 <b>views</b> 15:11,12 <b>visit</b> 16:2 <b>visiting</b> 15:15 <b>visitors</b> 30:2,3,5,7 30:16 <b>visits</b> 29:9,12 <b>voce</b> 22:23 <b>voluntarily</b> 37:11 <b>volunteer</b> 38:25 <b>vs</b> 1:6 4:3	
		<hr/> <p style="text-align: center;"><b>W</b></p> <hr/> <b>want</b> 16:19 17:18,24 18:16,23 22:1 24:5 31:5 40:16 <b>Wardlow</b> 1:13 3:3 4:2 6:4,14,19 7:11,19,23 16:24 17:14 18:2 23:2 28:2,20 29:20	

**James Wardlow**  
**October 27, 2015**

<b>worth</b> 26:4 <b>wouldn't</b> 19:25 <b>wrong</b> 32:13 <hr/> <b>X</b> <hr/> <b>Y</b> <hr/> <b>Yeah</b> 17:1 <b>year</b> 8:23 9:7 15:3 15:9,13 47:14 <b>yearly</b> 13:14 <b>years</b> 21:19 <hr/> <b>Z</b> <hr/> <b>zero</b> 32:9,10,12,14 42:11,12,19 <hr/> <b>0</b> <hr/> <b>045</b> 1:8 <b>06901</b> 2:9 <hr/> <b>1</b> <hr/> <b>10:22</b> 51:3 <b>11</b> 54:21 <b>12</b> 25:8,9 <b>13</b> 4:11 <b>13036</b> 1:25 4:5 54:23 <b>15</b> 11:24 <b>150,000</b> 18:5 <b>16</b> 4:12 <b>18,000</b> 15:3 <hr/> <b>2</b> <hr/> <b>2007</b> 8:9,10 9:20 <b>2009</b> 49:25 <b>2011</b> 11:3 31:14 49:25 <b>2013</b> 12:4,4,7 31:11 45:6 <b>2014</b> 46:3 <b>2015</b> 1:15 4:4 6:2 31:12,16 52:5,12 54:21 <b>203.703.0800</b> 2:10 <b>21,000</b> 23:8 <b>22</b> 4:14 <b>25</b> 25:9 <b>26</b> 4:16 <b>27</b> 1:15 4:4,17 6:2 52:5 <b>28</b> 4:19 <hr/> <b>3</b> <hr/> <b>3</b> 10:22 <b>30</b> 4:20 44:20 45:6	<b>30,000</b> 29:11 30:4 <b>32</b> 4:22 <b>323.660.9916</b> 2:5 <b>33</b> 4:23 <b>35</b> 4:25 37:18 <b>35,000</b> 37:17 <b>36th</b> 2:4 <b>37</b> 5:4 <b>39</b> 5:6 <hr/> <b>4</b> <hr/> <b>43</b> 3:5 <b>44</b> 5:10 <b>45</b> 5:12 <b>48</b> 5:13 <b>49</b> 5:15 <hr/> <b>5</b> <hr/> <b>5</b> 3:5 <b>50</b> 3:5 <b>500</b> 29:14 30:7 <b>500,000</b> 9:7 <b>515</b> 2:4 <b>568</b> 1:19 <hr/> <b>6</b> <hr/> <b>600</b> 2:9 <b>68</b> 4:15 <hr/> <b>7</b> <hr/> <b>7</b> 4:9 <b>72</b> 4:15 <hr/> <b>8</b> <hr/> <b>85/837</b> 1:8 <hr/> <b>9</b> <hr/> <b>9</b> 11:23 46:3 <b>9:00</b> 1:16 6:2 <b>90071</b> 2:5 <b>91213057</b> 1:6		
---	--	--	--



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

HYBRID ATHLETICS, LLC,

Opposer,

v.

HYLETE, INC.,

Applicant.

Opposition No.: 91213057

Application Serial No.: 85/837,045

**APPLICANT'S NOTICE OF TRIAL DEPOSITION**

PLEASE TAKE NOTICE THAT pursuant to Trademark Rule 2.123 and Federal Rule of Civil Procedure 30, Applicant Hylete, Inc. ("Applicant"), by its attorneys of record, will take the trial deposition by oral examination James Wardlow, Hylete, Inc., 564 Stevens Avenue, Solana Beach, California 92075, to be held at the offices of Hylete, Inc., located at 568 Stevens Avenue, Solana Beach, California 92075, on Tuesday, October 27, 2015, commencing at 9:00 a.m. The deposition will be taken before a notary public or other officer duly authorized to administer oaths, and will be recorded by stenograph. The deposition will continue from day to day until completed.

All counsel of record are invited to attend the deposition and examine the deponent in accordance with applicable rules.

DATE: October 16, 2015

/Kyri tsircou/  
Kyriacos Tsircou  
Tsircou Law, P.C.  
Attorneys for Applicant

**CERTIFICATE OF SERVICE**

I hereby certify that on October 16, 2015, I have sent a copy of  
APPLICANT HYTELE, INC.'S NOTICE OF TRIAL DEPOSITION to the  
foregoing, by electronic mail and U.S. Mail, First Class pre-paid postage, to:

Wesley W. Whitmyer  
Whitmyer IP Group  
600 Summer Street  
Stamford, CT 06901  
Tel. (203) 703-0800 Facsimile (203) 703-0801  
Email:litigation@whipgroup.com

/kyri tsircou/

Kyriacos Tsircou, Esq.

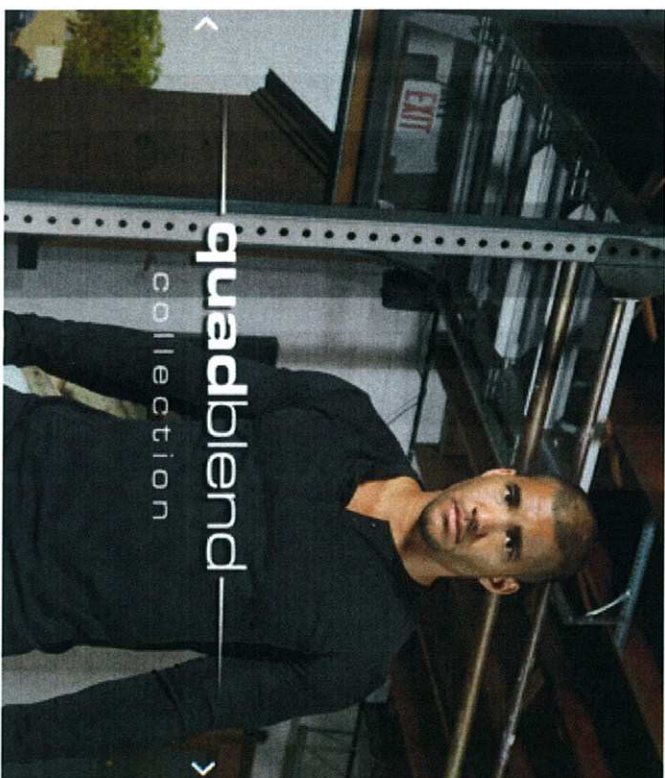
[men](#)
[women](#)
[collections](#)
[#HYLETEnation](#)



## accent II crop

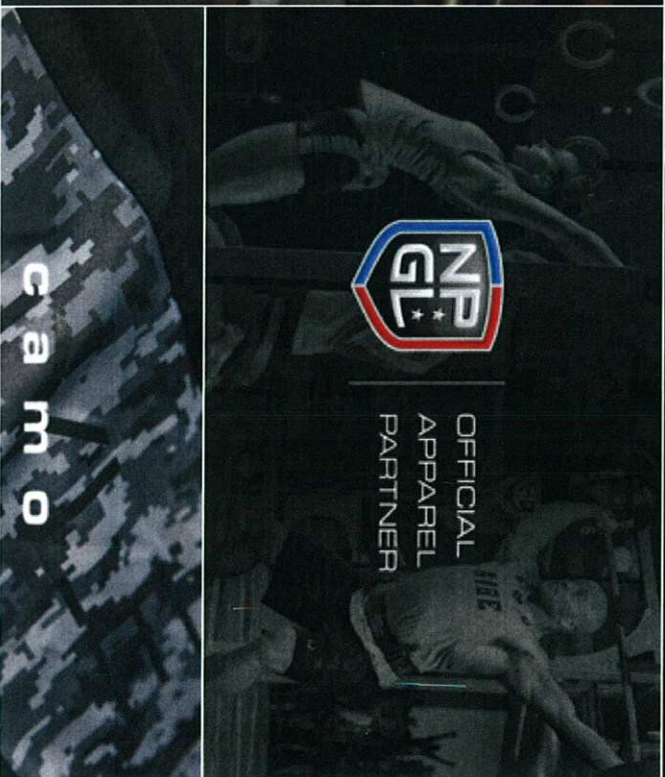
superior comfort, perfectly smooth fit around your hips

shop now



## quadblend

collection



OFFICIAL  
APPAREL  
PARTNER

camo

APPLICANTS

Exhibit

B

Date 10/27/2015

1PG.

Depo/Case HYBRID V. HYTE - JAMES WARDLOW

Kh

Karla L. Beard, CSR 13036



### The Right Tools For Your Holiday Campaigns

Get more in-store traffic, grow your sales online or just increase awareness. Whatever you want to do for the holidays, check out our tips on

[Learn More](#)

### Promote

#### THIS WEEK

303,054  
Post Reach

10,001  
Post Engagement

125  
Shop Now

27  
Website Clicks

7 of 8  
Response Rate

1 hour  
Response Time



Timeline About Photos Likes More

87% response rate, 1-hour response time  
Respond faster to turn on the icon

149k likes +868 this week  
Abbe Guddal and 328 other friends

303,054 post reach this week

Invite friends to like this Page

ABOUT

Performance Cross-Training Apparel

Liked Message

2015  
2014  
2013  
2012

Status Photo / Video Offer, Event

Write something

HYLETE

Published by Jamie Wardlow 19 hrs

Introducing the new vertex II flex-knit zip pocket pant. The vertex's patented waistband gives this best in class cross-training pant a noticeable competitive advantage. New features include YKK auto-lock zippers and added color options.





trainhylete

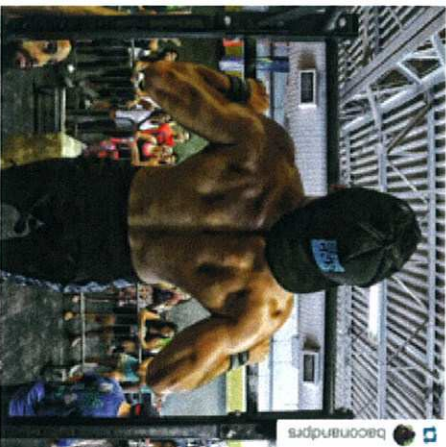
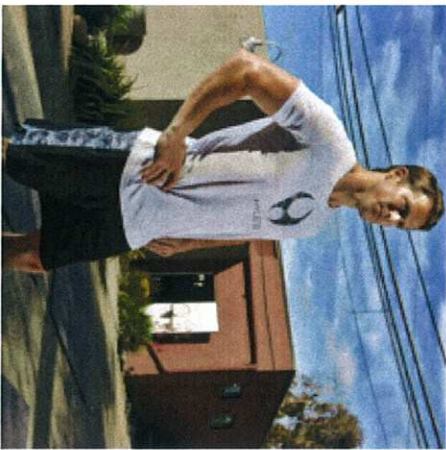
EDIT PROFILE

HYLETE builder of performance cross-training apparel Shop the feed: [likeitwant.it/hylete](https://likeitwant.it/hylete)

856 posts

21k followers

1,616 following



1 I. Jentgen

2 people that took my seminar or whatever it may be  
3 is going on.

4 Q. You mentioned that you stopped using  
5 Facebook or --

6 A. Yes.

7 Q. You mentioned you stopped using  
8 Facebook because the algorithm changed. Is that  
9 for what pages?

10 MR. BEGAKIS: Objection, leading the  
11 witness.

12 A. So we stopped using Facebook for  
13 Hybrid Athletics primarily as it relates to, for  
14 a long time we stopped using it for anything just  
15 because we're not reaching the people who like  
16 our page.

17 Q. And why aren't you reaching the  
18 people?

19 A. Because the algorithm changed, so it  
20 used to be organic, and we would reach, if you  
21 were logged in at Facebook at the time when we  
22 posted, you would see it.

23 Now it's not like that, and so we're  
24 not reaching our members with the posts that  
25 we're doing. So it's kind of not worth the same

1 I. Jentgen

2 amount of time, and Instagram has become more  
3 prevalent because of that, because the algorithm  
4 is, although Instagram kind of hurts you too,  
5 because it's only, it's based on the number of  
6 people you're following and it's only organic if  
7 you're following 3,000 people and people are  
8 uploading content, and it's only 15-second  
9 videos, you're going to get lost in all the  
10 traffic there, so.

11 Q. So, if you wanted more followers on  
12 Facebook, how would you do that?

13 A. If we wanted more followers on  
14 Facebook, we could pursue advertising. There is  
15 a number of different ways in which you can  
16 increase your following on Facebook, and you can  
17 do so by it depends what your goals are.

18 You can increase it, so I can make a  
19 post. If my goal of this post, let's say it's a  
20 workout post. Is it my goal for this post to  
21 reach more people and to have more people view  
22 it? That's one avenue. Or I could have the goal  
23 be that I want more people to like our page.  
24 That's another goal. Or I could have people want  
25 to buy something from our store. That's a third

1 I. Jentgen

2 goal. And I could have a fourth goal being I  
3 want them to sign up for a seminar or membership  
4 at our gym.

5 So all of those different goals have  
6 a specific campaign that can be set up with  
7 targeting demographics as it relates to each one.

8 Q. So in your experience as a brand  
9 manager, how would you get more likes on the  
10 Facebook page?

11 MR. BEGAKIS: Objection. Calls for  
12 speculation.

13 A. The way to get the most likes, if we  
14 were only considering likes, it would be to  
15 launch a campaign that was like-specific, so you  
16 can work with the Facebook consultant where you  
17 set it up you want to get more likes on your page  
18 and promote your Facebook page. You can set up a  
19 campaign as such.

20 Q. And what --

21 A. You would have to allocate dollars  
22 towards it, so you would pay Facebook based on  
23 the length of the campaign, based on your target  
24 and hopes in terms of how many likes you would  
25 get.



1 I. Jentgen

2 You would pay Facebook for the ad to  
3 be served, and you can serve the ad in a number  
4 of ways. You can have it served only to desktop  
5 users, only to mobile users. You could have it  
6 served on the right-hand rail where sponsored  
7 posts only pop up, or you could have it served as  
8 a post within the feed, which is then curated in  
9 with posts that are organic or not paid  
10 advertisements as well.

11 Q. So, since the algorithm change, what  
12 have you noticed with the likes on Rob's page,  
13 Rob's Facebook page?

14 MR. BEGAKIS: Objection. Calls for  
15 speculation.

16 A. His athletes page or the Hybrid  
17 Athletics page? There are two separate pages.

18 Q. Since the algorithm change, what have  
19 you noticed with the likes on both pages?

20 A. On both pages, stagnant.

21 MR. BEGAKIS: Objection, compound.

22 A. So the likes with the Facebook page,  
23 as it relates to Hybrid Athletics, we haven't  
24 grown much, and Rob's page he's not posted on  
25 there nearly ever. So I think he's, I haven't

1 I. Jentgen

2 even checked the numbers recently. He's right  
3 around 30,000, which is the same place we left it  
4 in about 2013. So he's just not sharing content  
5 there, because nobody is seeing it.

6 Q. And why isn't anybody seeing it?

7 A. The algorithm changed and because  
8 he's not paying for promotion. We've dabbled in  
9 paying for promotion, but in terms of our spend  
10 and what we were getting out of it, we've been  
11 able to explore other avenues.

12 So Instagram has kind of filled the  
13 void, but not to the same extent that we had with  
14 the success with Facebook, and just with the  
15 campaigns that we've run in the past to support  
16 tee shirt sales we've done that in the past, they  
17 have basically covered their costs. So it hasn't  
18 been a wildly successful endeavor on our end.

19 Q. In marketing the Hybrid Athletics H,  
20 what types of advertising or promotion do you do?

21 A. So most of what we're doing is  
22 organic promotion. So, basically, through our  
23 network of coaches and Rob's friends like it  
24 would be through the tee shirts them posting  
25 workout videos, things of that nature, but we



Search



All prices are in USD

MENS LADIES EQUIPMENT SALE BLOG SHIPPING & RETURNS RSS SYNDICATION

## CURRENT TOP SELLERS



Hybrid Athletics Stone Molds

Go Heavy

\$75.00

Not Rated

CHOOSE OPTIONS



Go Heavy

\$27.50

Not Rated

CHOOSE OPTIONS



Men's Grey Go Heavy

\$27.50

Not Rated

CHOOSE OPTIONS



Women's Go Heavy Tank

\$27.50

Not Rated

CHOOSE OPTIONS



Hybrid Athletics Old School - Grey

\$22.50

Not Rated

CHOOSE OPTIONS

## NEW PRODUCTS

APPLICANTS Exhibit F  
Date 10 / 27 / 2015 1pg.  
Depo/Case HYBRIDV. HYLETE - JAMES WARDLOW  
10 Karla L. Beard, CSR 13036

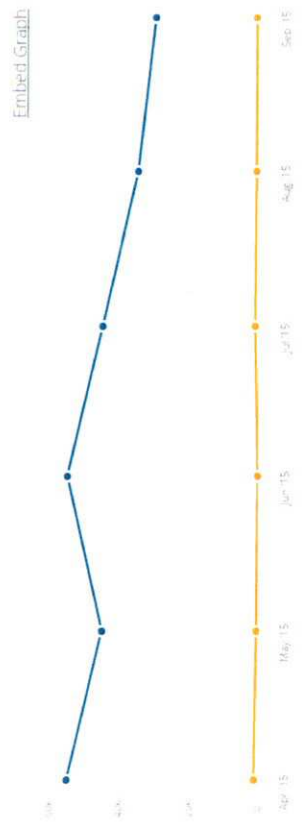
Hylete.com Vs. Hybridathleticsapp...

Add More Competitors In Pro

# Traffic Overview

## Estimated Monthly Visits

Showing last 6 months



Select Date Range

Embed Graph

## Engagement

On Desktop, in September, 2015

Visits	30K	500
Time On Site	00:06:35	00:01:16
Page Views	10.59	5.69
Bounce Rate	23.96%	0.00%



Compare

Search terms

hylete

Search term

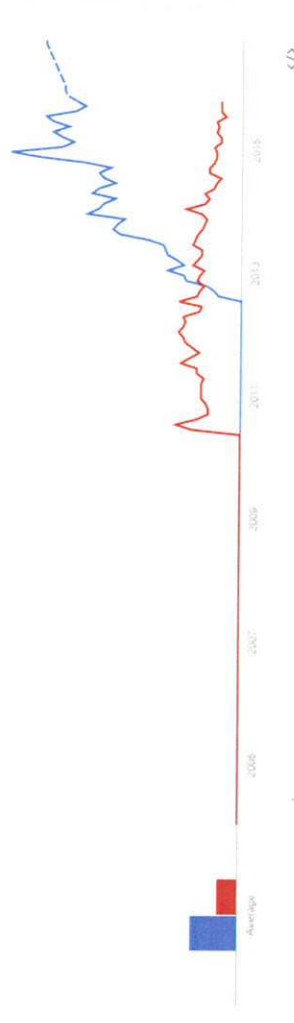
"hybrid athletics"

Search term

+ Add term

### Interest over time

News headlines ✓ Forecast



### Regional interest

hylete "hybrid athletics"

Region | City

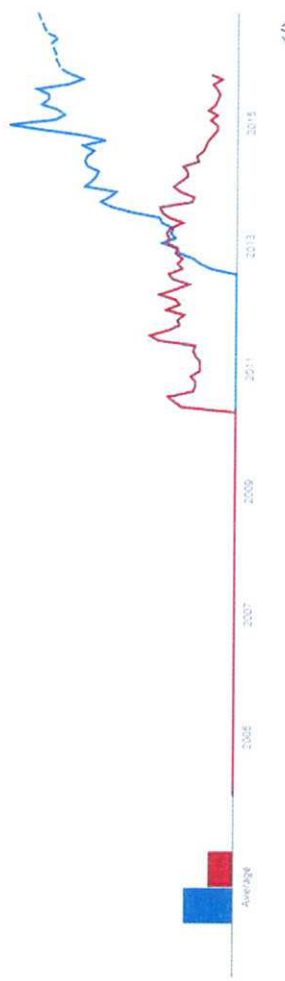
### Compare Search terms



### Interest over time

News headlines

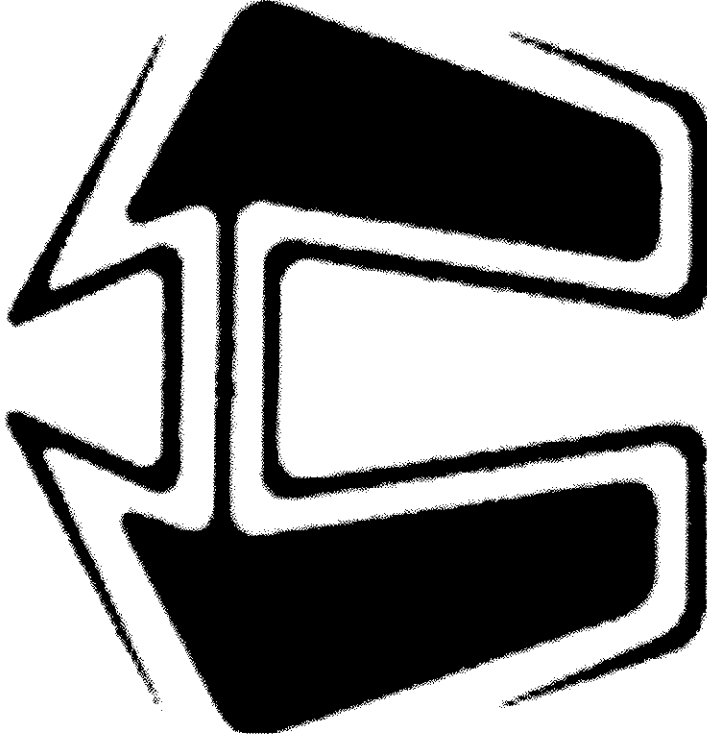
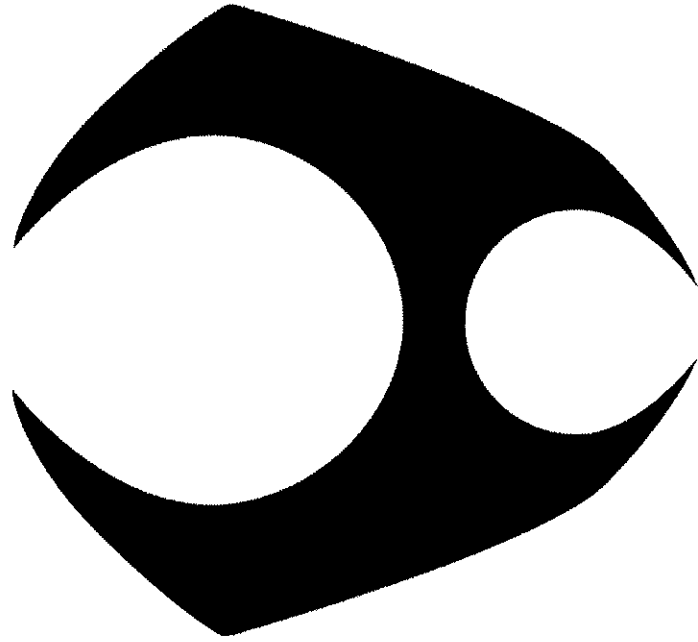
Forecast

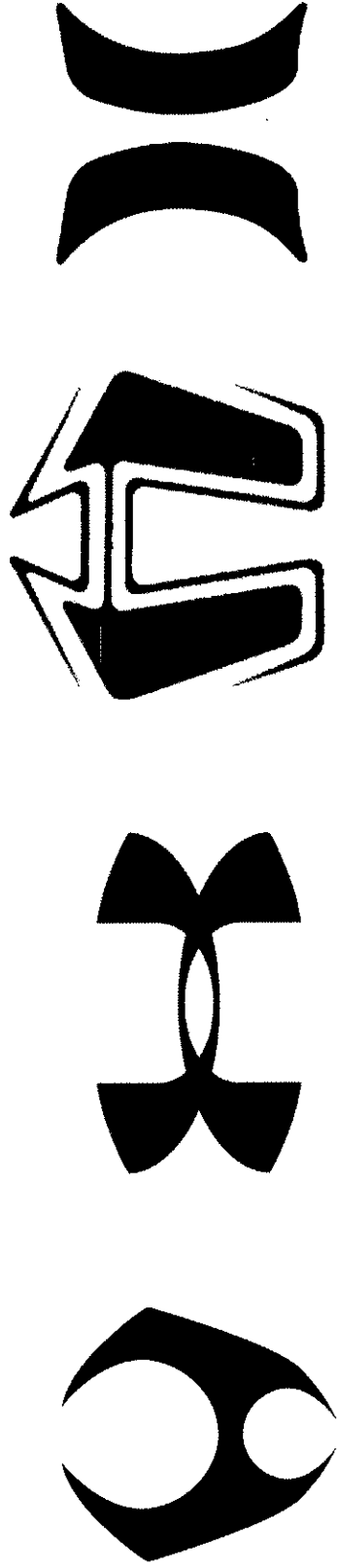


### Regional interest

hylete "rob orlando"

Print and share







## Exit Survey

If you have a second, we would love to hear from you.

*All information is anonymous and will only be used to better serve the HYLETE Nation.*

What is your gender?

\*

- ☐ Male
- ☐ Female

Where did you first hear about HYLETE? \*

- ☐ Referred by a friend
- ☐ Third party website (Blog, News Outlet)
- ☐ Social Media (Facebook, Twitter, etc)
- ☐ My local Gym or CrossFit Box
- ☐ Event

Please choose the option that best describes you.

Which of these activities do you participate in most frequently?

(At least once a week) \*

- ☐ CrossFit
- ☐ TRX
- ☐ Functional Fitness (eg. Kettlebells, Boot camp)
- ☐ Yoga
- ☐ Martial Arts
- ☐ Boxing
- ☐ Running
- ☐ Powerlifting
- ☐ Olympic lifting

Choose all that apply.

<https://hylete.wufoo.com/forms/exit-survey/>

What influenced today's purchase? \*

- ☐ General Search Query (eg. Google Search)
- ☐ WOD Talk Magazine
- ☐ Event (eg. CrossFit)
- ☐ Friend / Referral
- ☐ I am a return customer
- ☐ Coach / Trainer
- ☐ Social Media Promotion (eg. Facebook, Twitter)
- ☐ Social Media Post
- ☐ My Mad Methods Magazine/Website
- ☐ Other

Please choose the option that best describes you.

APPLICANTS Exhibit L

Date 10/27/2015 2:16 S.

Depo/Case HYLETE v. HYLETE - JAMES WARDLAW

by Karla L. Beard, CSR 13036

Who are you purchasing gear for?

- ☐ Yourself
- ☐ Friend/Family
- ☐ Significant other
- ☐ Client
- ☐ Other

Do you own a gym?

- ☐ Yes
- ☐ No

Anything else you would like us to know? (Not Required)